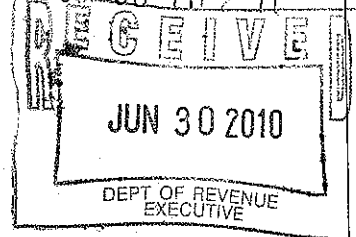


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IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
FOR SKAGIT COUNTY

WHATCOM COUNTY, a charter county
and political subdivision of the State of
Washington and THE CITY OF
BELLINGHAM, a municipal corporation
and political subdivision of the State of
Washington,
Plaintiffs,

v.

THE STATE OF WASHINGTON, a
sovereign state of the United States, and the
WASHINGTON STATE DEPARTMENT
OF REVENUE and CINDI L.
HOLMSTROM, DIRECTOR, in her
official capacity,

Defendants.

No.

COMPLAINT FOR A WRIT OF
CERTIORARI, INJUNCTIVE AND
DECLARATORY RELIEF

COMES NOW Whatcom County and the City of Bellingham, by and through their
undersigned attorneys, and by way of claim against the Defendants, state as follows:

I. PARTIES AND JURISDICTION

1.1 Plaintiff City of Bellingham ("City") is a first class charter city and a
municipal corporation organized and existing under the laws of the State of Washington.
The City of Bellingham will be directly and adversely affected if the Department of
Revenue interpretation of RCW 82.08.0273 is allowed to remain in effect.

COMPLAINT FOR A WRIT OF CERTIORARI,
INJUNCTIVE AND DECLARATORY RELIEF - 1

COPY

City of Bellingham
CITY ATTORNEY
210 Lottie Street
Bellingham, Washington 98225
Telephone (360) 778-8270
Fax (360) 778-8271

1 1.2 Plaintiff, Whatcom County, is a charter county and political subdivision of
2 the State of Washington. Whatcom County will be directly and adversely affected if the
3 DEPARTMENT OF REVENUE interpretation of RCW 82.08.0273 is allowed to remain
4 in effect.

5 1.3 Defendant State of Washington is a sovereign state of the United States.

6 1.4 Defendant, Cindi L. Holmstrom, is the Director of the Washington
7 Department of Revenue, an agency of the State of Washington, and is a defendant in her
8 official capacity.

9 1.5 This court has subject matter jurisdiction over this action pursuant to RCW
10 7.24.010 and .020 because this action presents a justifiable controversy between the
11 plaintiffs and defendants, it is an action available for construction of a statute, and there is
12 no adequate remedy at law. The Court also has jurisdiction by virtue of RCW 2.08.010,
13 RCW 4.12.020 (2), RCW 7.40.010, and RCW 7.16. The Court also has jurisdiction to
14 stay proceedings and restrain the parties pursuant to RCW 7.24.190.

15 1.6 Venue is proper in Skagit County as to Whatcom County and the City of
16 Bellingham pursuant to RCW 36.01.050 and RCW 4.92.010(4). Venue is also proper in
17 Skagit County pursuant to RCW 4.92.010 (4) as to the State of Washington and RCW
18 4.12.020(2) as to Defendant, Cindi L. Holmstrom, Director of the Department of
19 Revenue.

20 **II. NATURE OF THE CASE/BACKGROUND FACTS**

21 2.1 This is an action for a writ of certiorari, injunctive and declaratory relief
22 by the City of Bellingham and Whatcom County against the State of Washington and
23 Cindi L. Holmstrom, in her official capacity as Director of the Department of Revenue,

24
25
26
27
28 COMPLAINT FOR A WRIT OF CERTIORARI,
INJUNCTIVE AND DECLARATORY RELIEF - 2

City of Bellingham
CITY ATTORNEY
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Telephone (360) 778-8270
Fax (360) 778-8271

1 challenging the interpretation and application of RCW 82.08.0273 and seeking to enjoin
2 them from advising and instructing retailers that Canada's "Harmonized Sales tax"
3 system exempts residents of Canadian provinces subject to that tax collection system from
4 paying Washington state local retail sales tax. Attached hereto and incorporated herein by
5 this reference as Exhibit "A" is a true and correct copy of RCW 82.08.0273.
6

7 2.2 The lawsuit concerns the Washington State Department of Revenue
8 interpretation of RCW 82.08.0273 and its related Excise Tax Advisory Number
9 3054.2009, which provides for an exemption from the retail sales tax to certain
10 nonresidents of Washington for purchases of tangible personal property for use outside
11 this state. This exemption is only available to residents of other states, U.S. possessions,
12 or Canadian provinces when the jurisdiction does not impose a retail sales tax of three
13 percent or more. Attached hereto and incorporated herein by this reference as Exhibit
14 "B" is a copy of the Excise Tax Advisory.
15

16 2.3 The Government of Canada and the Government of British Columbia have
17 agreed to move to a new "harmonized sales tax" system on July 1, 2010. They have
18 entered into an agreement entitled "Comprehensive Integrated Tax Coordination
19 Agreement" for the stated purpose of subjecting the collection of federal and provincial
20 sales taxes to a single administration. The citizens of British Columbia will pay the same
21 amount of sales tax on their retail purchases, only the manner of collection will be
22 different. Attached hereto and incorporated herein by this reference as Exhibit "C" is a
23 copy of the "Comprehensive Integrated Tax Coordination Agreement."
24

25 2.4 The Department of Revenue has determined that even though it is
26 denominated a "harmonized sales tax" and the consumers pay the same tax on their retail
27

1 purchases, this change in tax administration qualifies for the exemption. However,
2 practically speaking, a sales tax versus an added value tax merely reflects a different way
3 of collecting the same net transfer of money from the end consumer to the government.
4 In Excise Tax Advisory Number 3054.2009, the Department of Revenue found that
5 residents of other Canadian provinces with a similar tax structure qualified for the
6 exemption, thus, the Department of Revenue has determined that the residents of British
7 Columbia are also entitled to the exemption. The argument advanced by the department is
8 that it must remain consistent with its original interpretation as expressed in Excise Tax
9 Advisory Number 3054.2009.
10

11
12 This change in Canada's method of tax collection should not be interpreted in a
13 manner that misapplies RCW 82.08.0273 and that is detrimental to the citizens of
14 Whatcom County and the City of Bellingham. Attached hereto and incorporated herein
15 by this reference as Exhibit "D" is the press release issued by the Department of Revenue
16 dated June 8, 2010, and the Instructions for retailers on sales tax exemption for British
17 Columbia residents dated January 10, 2010.
18

19 2.5 Allowing this exemption to British Columbia residents will result in a
20 significant loss of revenue to the City of Bellingham and to Whatcom County. Both local
21 jurisdictions have based their current budgets and expenditures on the projected revenue
22 generated by this sales tax. The loss of sales tax revenue will reduce the general funds of
23 the entities at a time of increasing budget deficits and will result in a reduction of staff,
24 and the reduction of the health, safety, and other services that the plaintiffs provide to
25 their citizens.
26
27

III. BASIS FOR INJUNCTIVE RELIEF/ IMPACTS

3.1 Plaintiff reallege the allegations contained in paragraphs 2.1 through 2.5.

3.2 Refunds: Unless the Department of Revenue is enjoined from continuing to advise and instruct retailers that residents of Canadian provinces with the harmonized sales tax are eligible for an exemption under RCW 82.08.0273, then the City and County local government budgets will suffer irreparable harm. It may be difficult for the Department of Revenue to recoup from retailers the lost sales tax revenue in the event that the City and County ultimately prevail in this litigation. (See RCW 82.32A.020)

3.3 Substantial cutbacks: If the advice and instructions from the Department of Revenue to retailers is not enjoined, the City and County will suffer substantial loss of revenue, which will result in a further cutback of local government services.

3.4 2010 Budget Shortfalls exacerbated: Loss of this sales tax revenue will exacerbate the revenue shortfalls already being experienced by these local jurisdictions.

3.5 Timing of Legislative session for alternative relief: The Department of Revenue did not communicate with local governments prior to their issuing instruction in January of 2010, that British Columbia residents were going to qualify for this tax exemption. If the Department of Revenue had communicated with the local governments, then there would have been an opportunity to seek a legislative amendment during the last legislative session thus avoiding the loss of revenue. The City and County are now in a position of having to suffer the loss of revenue for approximately a year until the next legislative session if this injunctive relief is not granted by the Court.

3.6 Need for equitable remedy: There is no immediate adequate remedy at law. An Excise Tax Advisory opinion is not subject to any judicial review under the

1 administrative procedures act "APA." The only legal avenue to challenge an advisory of
2 the Department of Revenue is by an action for declaratory and other equitable relief.

3 3.7 Need for clear written advice: An injunction is also needed to prevent the
4 Department of Revenue from instructing on this matter until a final ruling by this court.

5 3.8 Public import: This matter is of significant public import as it affects the
6 tax policy of the State of Washington. The Department of Revenue's advisory opinion
7 and its adherence to a policy that grants non residents an exemption from sale tax is not in
8 keeping with the Department's stated policy of "seeking a partnership with local
9 government working together to fund Washington's future, to fairly collect tax revenue
10 to fund public services, and to advocate sound tax policy." None of these policy
11 objectives are met by the Department's lack of communication with the local jurisdiction
12 in a timely manner or the failure to study the impacts of their advice and instructions
13 regarding the interpretation of RCW 82.08.0273.
14
15

16 **IV. BASIS FOR DECLARATORY JUDGMENT**

17 4.1 Plaintiffs reallege the allegations contained in paragraphs 2.1 through 3.8.

18 4.2 This matter is ripe for declaratory relief pursuant to RCW 7.24 because a
19 genuine dispute exists as to the interpretation of a statute. A declaratory judgment action
20 is proper to determine the construction and interpretation of a statute, the parties have an
21 existing genuine controversy on which a judgment may effectively be rendered and which
22 lends itself to final judgment in law and which is of significant public import.
23
24

25 4.3 RCW 82.08.0273 should be read in a manner which advances sound tax
26 policy in the State of Washington. Words should be afforded their common sense
27 meaning and the statute given a practical application. Even under Canada's new
28

1 "Harmonized Sales Tax" collection system, British Columbia residents will still be paying
2 a sales tax of more than 3% on their retail purchases in British Columbia. The purpose of
3 the exemption provided in the statute was to level the "shopping field" and encourage
4 consumers to shop in the State of Washington. The rationale was that if they did not pay a
5 sales tax of more than 3% in their jurisdiction but came to Washington to shop and had to
6 pay the sales tax, they would be discouraged from shopping in Washington. The purpose
7 for the exemption is not being met by the current interpretation because the B.C. residents
8 in fact (if not in "name") still have to pay a sales tax of more than 3% on purchases in
9 their Province.
10

11
12 4.4 Further, the tax exempt purchases brought back into Canada will also be
13 subject to Canada's use tax.

14 4.5 Given that no sound tax policy or legitimate state interest is advanced by
15 the Department of Revenue interpretation/advisory opinion, (in fact the opposite is true),
16 an esoteric and rigid adherence to tax lexicon should not operate to dictate unsound tax
17 policy that is detrimental to the taxpayers of the State of Washington.
18

19 **V. BASIS FOR WRIT OF CERTIORARI**

20 5.1 Plaintiffs reallege allegations contained in paragraphs 2.1 though 4.5.

21 5.2 Plaintiffs are entitled to have the Court issue a writ of certiorari pursuant to
22 RCW 7.16, reviewing the Department of Revenue's interpretation of RCW 82.08.0273. A
23 writ of certiorari is appropriate to review the agency excise tax advisory. The
24 interpretation of a statute and the meaning of tax terminology are appropriate subjects for
25 determination by a court because these questions are judicial in nature and there is no
26 appeal provided for disputing an excise tax advisory, nor an adequate remedy at law.
27
28

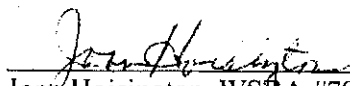
VII. PRAYER FOR RELIEF

WHEREFORE, the Plaintiffs, the City of Bellingham and Whatcom County, pray that the Court:

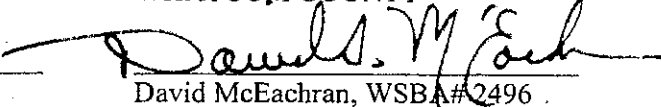
1. Grant a preliminary injunction enjoining the Department of Revenue from continuing to advise and instruct retailers to exempt residents of British Columbia, and any other similarly situated Canadian Provinces, from the State's retail sales tax;
2. For a judgment declaring that the change in the Canadian government's method of tax collection does not exempt residents of Canadian Provinces with a Harmonized Sales Tax from paying Washington State sales tax if they pay a tax of over 3% on purchases in their Province, whether it is called in tax lexicon, a value added tax or a retail sales tax;
3. For a judgment declaring that the Province of British Columbia residents, and the residents of any other similarly situated Canadian Province, are not entitled to the exemption from Washington state and local sales taxes if that Province is collecting more than 3% from retail sales in their Province;
4. For final injunctive relief after hearing; and
5. For such other relief as the Court deems appropriate.

Respectfully submitted this 30th day of June, 2010.

CITY OF BELLINGHAM


Joan Hoisington, WSBA #7966
Bellingham City Attorney

WHATCOM COUNTY


David McEachran, WSBA #2496
Whatcom County Prosecuting Attorney

COMPLAINT FOR A WRIT OF CERTIORARI,
INJUNCTIVE AND DECLARATORY RELIEF - 8

City of Bellingham
CITY ATTORNEY
210 Lottie Street
Bellingham, Washington 98225
Telephone (360) 778-8270
Fax (360) 778-8271

EXHIBIT A**RCW 82.08.0273****Exemptions -- Sales to nonresidents of tangible personal property, digital goods, and digital codes for use outside the state -- Proof of nonresident status -- Penalties.**

(1) The tax levied by RCW 82.08.020 does not apply to sales to nonresidents of this state of tangible personal property, digital goods, and digital codes, when such property is for use outside this state, and the purchaser (a) is a bona fide resident of a state or possession or Province of Canada other than the state of Washington and such state, possession, or Province of Canada does not impose a retail sales tax or use tax of three percent or more or, if imposing such a tax, permits Washington residents exemption from otherwise taxable sales by reason of their residence, and (b) agrees, when requested, to grant the department of revenue access to such records and other forms of verification at his or her place of residence to assure that such purchases are not first used substantially in the state of Washington.

(2) Notwithstanding anything to the contrary in this chapter, if parts or other tangible personal property are installed by the seller during the course of repairing, cleaning, altering, or improving motor vehicles, trailers, or campers and the seller makes a separate charge for the tangible personal property, the tax levied by RCW 82.08.020 does not apply to the separately stated charge to a nonresident purchaser for the tangible personal property but only if the separately stated charge does not exceed either the seller's current publicly stated retail price for the tangible personal property or, if no publicly stated retail price is available, the seller's cost for the tangible personal property. However, the exemption provided by this section does not apply if tangible personal property is installed by the seller during the course of repairing, cleaning, altering, or improving motor vehicles, trailers, or campers and the seller makes a single nonitemized charge for providing the tangible personal property and service. All of the requirements in subsections (1) and (3) through (6) of this section apply to this subsection.

(3)(a) Any person claiming exemption from retail sales tax under the provisions of this section must display proof of his or her current nonresident status as provided in this section.

(b) Acceptable proof of a nonresident person's status includes one piece of identification such as a valid driver's license from the jurisdiction in which the out-of-state residency is claimed or a valid identification card which has a photograph of the holder and is issued by the out-of-state jurisdiction. Identification under this subsection (3)(b) must show the holder's residential address and have as one of its legal purposes the establishment of residency in that out-of-state jurisdiction.

(4) Nothing in this section requires the vendor to make tax exempt retail sales to nonresidents. A vendor may choose to make sales to nonresidents, collect the sales tax, and remit the amount of sales tax collected to the state as otherwise provided by law. If the vendor chooses to make a sale to a nonresident without collecting the sales tax, the vendor shall, in good faith, examine the proof of nonresidence, determine whether the proof is acceptable under subsection (3)(b) of this section, and maintain records for each nontaxable sale which shall show the type of proof accepted, including any identification numbers where appropriate, and the expiration date, if any.

(5)(a) Any person making fraudulent statements, which includes the offer of fraudulent identification or fraudulently procured identification to a vendor, in order to purchase goods without paying retail sales tax is guilty of perjury under chapter 9A.72 RCW.

(b) Any person making tax exempt purchases under this section by displaying proof of identification not his or her own, or counterfeit identification, with intent to violate the provisions of this section, is guilty of a misdemeanor and, in addition, is liable for the tax and subject to a penalty equal to the greater of one hundred dollars or the tax due on such purchases.

(6)(a) Any vendor who makes sales without collecting the tax to a person who does not hold valid identification establishing out-of-state residency, and any vendor who fails to maintain records of sales to nonresidents as provided in this section, is personally liable for the amount of tax due.

(b) Any vendor who makes sales without collecting the retail sales tax under this section and who has actual knowledge that the purchaser's proof of identification establishing out-of-state residency is fraudulent is guilty of a misdemeanor and, in addition, is liable for the tax and subject to a penalty equal to the greater of one thousand dollars or the tax due on such sales. In addition, both the purchaser and the vendor are liable for any penalties and interest assessable under chapter 82.32 RCW.

[2009 c 535 § 512; 2007 c 135 § 2; 2003 c 53 § 399; 1993 c 444 § 1; 1988 c 96 § 1; 1982 1st ex.s. c 5 § 1; 1980 c 37 § 39. Formerly RCW 82.08.030(21).]

NOTES:

Intent -- Construction -- 2009 c 535: See notes following RCW 82.04.192.

Intent -- Effective date -- 2003 c 53: See notes following RCW 2.48.180.

Effective date -- 1988 c 96: "This act shall take effect July 1, 1989." [1988 c 96 § 2.]

Intent -- 1980 c 37: See note following RCW 82.04.4281.

Excise Tax Advisory

Excise Tax Advisories are interpretive statements authorized by RCW 34.05.230.

NUMBER: 3054.2009

ISSUE DATE: February 2, 2009

Sales to Nonresidents of Jurisdictions Imposing a Sales Tax of Less than Three Percent

RCW 82.08.0273 provides an exemption from the retail sales tax to certain nonresidents of Washington for purchases of tangible personal property *for use outside this state*. This statutory exemption is available only to residents of states other than Washington, United States possessions, or Canadian provinces when the jurisdiction does not impose a retail sales tax of three percent or more.

The statute specifically provides that sellers are not required to make tax-exempt sales to nonresidents. However, sellers who choose to make tax-exempt sales must meet the requirements provided below under "Instructions to Sellers."

Eligible nonresidents

As of January 31, 2008, only residents of the following states, possessions, and provinces of Canada qualify:

Alaska	American Samoa	Alberta
Colorado	Commonwealth of Northern Mariana Islands	New Brunswick
Delaware	Guam	Newfoundland and Labrador
Montana	Virgin Islands	Nova Scotia
New Hampshire		Northwest Territories
Oregon		Nunavut
		Quebec
		Yukon Territory

Please note that residents of Idaho and of the Province of British Columbia do not qualify for the exemption.

All ETAs were cancelled on February 2, 2009 and those which had a continued use were rewritten and reissued using a new numbering system. The new ETAs are numbered using the following format 3nnn.yyyy. The Department of Revenue issued ETA 3001.2009 which includes a cross reference table showing the old and new ETA numbers for those ETAs that were rewritten.

To inquire about the availability of receiving this document in an alternate format for the visually impaired or language other than English, please call (360)705-6715. Teletype (TTY) users please call 1-800-451-7985.

Please direct comments to:
Department of Revenue
Interpretation and Technical Advice
Division
P O Box 47453
Olympia, Washington 98504-7453
(360) 570.6124 eta@DOR.wa.gov

Date: February 2,

Eligible and ineligible sales

The law provides exemption from the tax only with respect to:

1. Sales of tangible personal property,
2. For use outside Washington,
3. To persons who can satisfactorily establish nonresident status,

Thus, the exemption does **not** apply with respect to charges for services that are included within the definition of the term "sale at retail." This includes, but is not limited to, services such as:

- Lodging at hotels or motels.
- Repair services.
- Laundry or dry cleaning services.
- Automobile towing or parking.
- Amusement and recreational activities such as golf, bowling, and charter fishing.
- Personal services such as tanning, tattooing, and dating services.
- Abstract, title insurance, or escrow services

The exemption also does **not** apply to sales of articles substantially used or consumed within Washington. This includes, but is not limited to sales of:

- Meals or refreshments prepared for immediate consumption.
- Articles to persons in the military stationed within Washington.
- Articles to nonresident students attending schools in this state.
- Articles to any other nonresident temporarily residing in Washington.

To receive this exemption, the purchaser must present evidence of their place of residence to the seller at the time of purchase as provided below.

Instructions to sellers

Sellers making exempt sales to eligible nonresidents must:

1. Examine one piece of identification that establishes proof of nonresidency. The identification must be a valid driver's license issued by the jurisdiction in which the out-of-state residency is claimed or a valid identification card issued by the out-of-state jurisdiction. The identification must A) bear the photograph of the holder B) show the holder's residential address, C) identify the holder's name, and D) be issued for the purpose of establishing residency.
2. Maintain a record of the type of documentation accepted as establishing nonresidency in (1) immediately above, including identification numbers, expiration dates, the purchaser's name, and the purchaser's state of residency.
3. Record the documentation accepted as establishing nonresidency on the invoice or other written evidence of sale and retain the information or maintain a legible photocopy of the documentation establishing nonresidency as part of the seller's accounting records for the statutory period of five years (refer to RCW 82.32.070). In the case of a seller making cash sales without issuing

Date: February 2,

- invoices (for example, retail hardware stores) and maintaining a log, such a log must identify the date and amount of sale, and the information described in (2) immediately above or in the case of corporate nonresidents the corporate nonresident permit number.
4. Presume that the item being sold will be used in Washington and is subject to retail sales tax if the purchaser requests the seller to deliver the merchandise to a Washington address. This presumption may be overcome if the purchaser gives the seller a signed written statement explaining the reason for delivery to a Washington residence and a specific statement indicating the item will not be used in Washington.

When making sales to nonresident corporations (see "Corporate Nonresidents," below) the seller must examine the corporate nonresident permit issued by the Department to make certain that it is valid during the period of the sale and that it is issued to the purchaser. In lieu of requirements (1) and (2) above, the seller must record the permit number and retain that information in accordance with the options outlined in (3) immediately above as part of the seller's accounting records for the statutory period of five years (refer to RCW 82.32.070).

It is important that sellers follow these instructions. RCW 82.08.0273 provides that a seller who makes sales without collecting retail sales tax is personally liable for the tax if the sale was made to a nonqualifying person or the records are not maintained as required.

The law also contains specific retail sales tax exemptions for sales of certain types of property to nonresidents. These include sales of motor vehicles and trailers (RCW 82.08.0264 and WAC 458-20-177), watercraft (RCW 82.08.0266 and WAC 458-20-238), and farm machinery or implements (RCW 82.08.0268 and WAC 458-20-239). The conditions and requirements for exemption with respect to these sales remain unchanged.

When completing the Tax Return, persons making exempt sales to qualifying nonresidents must include the amount of these sales in the gross amount reported in column 1 on the lines for both retailing B&O tax (Code 02) and retail sales tax (Code 01). The amount of the exempt sales is deducted in column 2 on the retail sales tax line (Code 01). The amount of the deduction must be identified on the deduction detail page under "Retail Sales Tax" as "Qualified Nonresident Sales" (I.D.0123). Please note that there is no comparable deduction on the Retailing B&O tax line (Code 02) because the law does not provide a comparable B&O tax deduction.

Corporate nonresidents

The Department of Revenue issues "corporate nonresident permits" upon request to qualifying corporations. A nonresident corporation must be incorporated in one of the states, possessions, or provinces of Canada identified above to qualify for a permit

Nonresident corporations wishing to obtain a corporate nonresident permit should contact the Department by calling (360) 902-7180 or by writing:

Taxpayer Account Administration
Post Office Box 47476
Olympia, Washington 98504-7476

Excise Tax Advisory
Number: 3054.2009
2009

Date: February 2,

For further assistance

If you have further questions about making tax-exempt sales to eligible nonresidents, please contact the Department of Revenue at:

Telephone Information Center: 1-800-647-7706

Taxpayer Information and Education Section
Post Office Box 47478
Olympia, Washington 98504-7478

Internet address: <http://dor.wa.gov>

EXHIBIT C

COMPREHENSIVE INTEGRATED TAX COORDINATION AGREEMENT

BETWEEN

THE GOVERNMENT OF CANADA

AND

THE GOVERNMENT OF BRITISH COLUMBIA

Comprehensive Integrated Tax Coordination Agreement

BETWEEN:

The Government of Canada (referred to in this agreement as "Canada"), represented by the Minister of Finance (Canada)

AND:

The Government of the Province of British Columbia (referred to in this agreement as the "Province"), represented by the Minister of Finance (British Columbia),

TOGETHER referred to in this agreement as the "Parties".

WHEREAS:

- I. This Agreement reflects the strong commitment by the Parties to work collaboratively in order to build a stronger economic foundation;
- II. The Parties agree that federal and provincial sales taxes should be subject to a single administration;
- III. The Parties wish to build upon the existing sales tax harmonization framework;
- IV. An integrated sales tax system is economically efficient and enhances the collection of revenues while reducing administrative duplication and costs, simplifying compliance and promoting federal-provincial fiscal co-operation and harmonization;
- V. The Parties recognize the needs of governments to maintain a tax system that is responsive to the citizens and the business community, that reflects both Parties' interests and that preserves the accountability of the federal and provincial finance Ministers;
- VI. The Parties acknowledge and recognize the objective of maintaining a broad harmonized tax base; and
- VII. The Parties recognize the importance of working collaboratively in exercising the flexibilities under this Agreement in a manner that is consistent with the sales tax harmonization framework.

NOW, THEREFORE, the Parties agree as follows:

Part I

Interpretation

1. In this Agreement,

"Agreement" means this comprehensive integrated tax coordination agreement, entered into by Canada with the Province under Part III.1 of the *Federal-Provincial Fiscal Arrangements Act*, R.S.C. 1985, c. F-8, and section 4 of the *Ministry of Intergovernmental Relations Act*, R.S.B.C. 1996, c. 303, including all Annexes attached, and all instruments amending or restating it, or any successor agreement to it;

"business day" means a day that is neither a Saturday nor a day defined as a holiday within the preamble to the definition of that word in subsection 35(1) of the *Interpretation Act*, R.S.C. 1985, c. I-21, as amended from time to time;

"CVAT" means the federal component of tax payable under Part IX of the Excise Tax Act that applies in a province irrespective of whether the province is a participating province;

"Excise Tax Act" means the *Excise Tax Act*, R.S.C. 1985, c. E-15, as amended from time to time;

"harmonized sales taxes" means the CVAT and the PVAT in respect of each participating province;

"harmonized sales tax rate", at any time in respect of a participating province, means the aggregate of the tax rates, at that time, under the CVAT and the PVAT in respect of the participating province;

"Implementation Date" of the PVAT in respect of the Province means the date on which the PVAT in respect of the Province is implemented;

"non-participating province" means any province, other than a participating province;

"participating province", at any time, means a province that has entered into a comprehensive integrated tax coordination agreement with Canada under Part III.1 of the *Federal-Provincial Fiscal Arrangements Act*, R.S.C. 1985, c. F-8 and that, at that time, is defined as such a province under section 123 of the Excise Tax Act;

"Provincial Sales Tax" of the Province means a retail sales tax that applies to a broad base of property or services, or a similar transaction tax that applies to a broad base of property or services, in respect of the Province;

"PVAT", in respect of a participating province, means the provincial component of tax payable under Part IX of the Excise Tax Act that is imposed, in addition to the CVAT, in respect of the participating province; and

"PVAT Rate", at any time in respect of a participating province, means the tax rate for, or in relation to, the participating province that is applicable, at that time, to determine and calculate the PVAT in respect of the participating province.

2. In this Agreement,
 - (a) unless otherwise specified, words or expressions used in this Agreement have the same meaning as in Part IX of the Excise Tax Act, except that a reference to the term "Canada" or to the term "Province" shall be read as a reference to the relevant "Party" of this Agreement where the context so requires;
 - (b) where a reference in this Agreement to "the definitions mutually agreed upon between the Parties" or a similar phrase appears, the Parties agree, for the purpose of establishing a mutual agreement in respect of such definitions, to:
 - (i) act reasonably;
 - (ii) work together collaboratively;
 - (iii) consider whether the definition can be accommodated under the revenue allocation mechanism set forth in Annex "A", while maintaining the integrity of that mechanism; and
 - (iv) take into consideration the capacity of the Minister of National Revenue to administer and enforce such definitions and the capacity of businesses to comply with such definitions; and
 - (c) for the purpose of clause 20, a Remission Order implemented by Canada that grants the remission of both CVAT and PVAT in respect of the Province on a broad-based category, described in the Remission Order, of transactions or events is to be considered a proposed tax base change in respect of CVAT.
3. The following are the Annexes that are attached to, and that form an integral part of, this Agreement:

Annex "A" - Revenue Allocation

Annex "B" - Provincial Flexibility in respect of Rebates

Annex "C" - Transitional Measures in respect of the Province

Part II

Implementation

4. Subject to the requisite legislative approvals, the Parties agree:
 - (a) to work collaboratively and in a timely manner towards the imposition of the PVAT in respect of the Province;
 - (b) that Canada will make best efforts to introduce, on or before March 31, 2010, the necessary legislative amendments to give effect to the Agreement;

- (c) that the PVAT in respect of the Province will be implemented on July 1, 2010; and
- (d) that the systems necessary for the Minister of National Revenue to effectively administer and enforce the PVAT in respect of the Province, and the systems necessary for the collection contemplated by clause 30 at Canadian international borders by the Canada Border Services Agency, will be in place as of the Implementation Date.

Part III

Tax Policy

- 5. The Parties agree that a Tax Policy Review Committee, consisting of representatives from Canada and each participating province, will review issues related to the legislation governing the harmonized sales taxes, including the common tax base, tax rates and common tax structure, and will provide timely advice, as appropriate, to the relevant federal and provincial Ministers of Finance.
- 6. The Minister of Finance (Canada) and the Ministers of Finance of each participating province will each appoint an individual to act, and serve from time to time, as that party's representative on the Tax Policy Review Committee.
- 7. Canada will chair the meetings of any committee, sub-committee or working group referred to in this Agreement.
- 8. Meetings of the Tax Policy Review Committee will be held as and when agreed upon by consensus between Canada and the participating provinces from time to time. Unless otherwise agreed upon between Canada and the participating provinces, the Tax Policy Review Committee will meet at least once in each twelve-month period.
- 9. Canada and the participating provinces will each communicate, as appropriate, the results of the deliberations of the Tax Policy Review Committee to the relevant federal and provincial Deputy Ministers of Finance.
- 10. The Tax Policy Review Committee may, in its discretion, establish special working groups to consider issues or matters related to the purposes of the Committee as set forth under clause 5.
- 11. The Parties agree that a sub-committee of the Tax Policy Review Committee (referred to as the "Revenue Allocation Sub-Committee"), consisting of representatives from Canada and each participating province, will monitor the ongoing application of the revenue allocation mechanism set forth in Annex "A" to ensure that this mechanism is functioning in the interests of the Parties and the other participating provinces and to determine whether changes to this mechanism are necessary from time to time. Canada and each participating province will appoint an individual to act, and serve from time to time, as that party's representative on the Revenue Allocation Sub-Committee. Meetings of the Revenue Allocation Sub-Committee will be held as and when agreed upon by consensus of the representatives of the Tax Policy Review Committee. Unless otherwise agreed upon by the representatives of the Tax Policy Review Committee, the Revenue Allocation Sub-Committee will meet at least once in each twelve-month period.
- 12. If the Tax Policy Review Committee cannot reach consensus in respect of an issue under its review, the issue will be referred to the Deputy Minister of Finance of Canada and of each participating province.

13. If an issue referred to the Deputy Ministers described in clause 12 remains unresolved, the issue will be referred to the dispute resolution process set forth in the applicable provisions of Part XIV.

14. Canada and the participating provinces will, in the fifth calendar year that follows the Implementation Date and once in each five-year period following that calendar year, review the harmonized sales tax system as well as its operation and administration with a view to improving that system. Subject to mutual agreement between Canada and the participating provinces, the timing of such review may be varied.

Part IV

Provincial Tax Rate

15. The Parties agree that the PVAT Rate in respect of the Province will be 7% as of the Implementation Date.

16. The PVAT Rate in respect of the Province may be increased, or decreased, in accordance with the provisions of this Agreement after a minimum period of two years from the Implementation Date. Following that two-year period, any change in the PVAT Rate in respect of the Province, as permitted under the provisions of this Agreement, will not occur more often than once in any twelve-month period.

Part V

Harmonized Tax Base

17. The Province agrees that the tax base for the PVAT in respect of the Province must remain common with the tax base for the CVAT in order to maintain a harmonized tax base between the CVAT and the PVAT in respect of the Province.

18. Canada may propose any tax base change in respect of CVAT and the Province agrees to be bound by all tax base changes that are implemented in respect of CVAT.

19. The Parties acknowledge that the provisions in clauses 17 and 18 of the Agreement will operate in a manner consistent with the Province's flexibility under the provisions of Annex "B".

20. Notwithstanding clause 18, if, during the term of this Agreement, a tax base change in respect of CVAT that is proposed by Canada (referred to as the "Proposed CVAT Base Change") would have the effect (taking into account PVAT rebated, refunded or remitted) of reducing by more than one percent the total of the net aggregate PVAT revenues (determined in accordance with Annex "A") and ITC recapture revenues (determined in accordance with the relevant provisions in Annex "C" under the heading, "Revenues and Expenses related to Transitional Measures") that would, in the absence of the Proposed CVAT Base Change, accrue to the Province for the calendar year in which the Proposed CVAT Base Change is proposed to be implemented (estimated by Finance (Canada), in consultation with the Province, at the time the change is proposed, using the latest available data and on the assumption that the change would have been in place at the beginning of the calendar year), Canada may fully implement the Proposed CVAT Base Change:

- (a) with prior written agreement from the Province; or
- (b) by fully compensating the Province under this clause, upon completion of each calendar year that the Proposed CVAT Base Change remains in effect, for the revenue loss of the Province solely attributable to the Proposed CVAT Base Change for that calendar year, provided that such compensation, if any, is subject to a reconciliation and adjustment process as well as a payments schedule similar to those set out under Annex "A" in respect of the revenue allocation.

For greater certainty, the provisions of this clause above do not apply in respect of a proposed amendment to federal legislation or regulations, or in respect of a Remission Order referred to under paragraph 2(c), if:

- (c) the amendment is proposed or the Remission Order is implemented as a consequence of changes in circumstances affecting the harmonized sales taxes and for the purpose of maintaining:
 - (i) the tax policy, or
 - (ii) the application or administration of the harmonized sales taxes that would exist in the absence of those changes; and
- (d) the proposed amendment or the Remission Order prevents or redresses an increase in the tax base.

Part VI

Provincial Revenues

21. The revenues in respect of the Province will consist of PVAT revenues in respect of the Province, determined in accordance with Annex "A", and any applicable transitional revenues provided for in Part XVII.

Part VII

Inter-Provincial Supplies

22. Subject to the requisite legislative approvals, the relevant legislation will specify that

- (a) the PVAT in respect of the Province applies to supplies made in the Province and does not apply to supplies made outside the Province, as determined by the place of supply rules under Part IX of the Excise Tax Act; and

- (b) a registrant that is outside the Province is required to collect the PVAT in respect of the Province in respect of taxable supplies made in the Province, as determined in accordance with paragraph (a).

Part VIII

Imposition of Tax at Canadian International Borders

23. In this Part, unless otherwise defined for the purposes of Part IX of the Excise Tax Act, the term "non-commercial imported goods" means imported goods, other than goods imported into Canada for sale or for any commercial, industrial, occupational, institutional or other like use.
24. Unless otherwise provided in this Part, the importation into Canada of non-commercial imported goods by, or for, a consumer that is a resident (including a "seasonal resident" as defined for the purposes of the *Seasonal Residents' Remission Order, 1991*) of the Province will be subject to the PVAT in respect of the Province in accordance with the rules generally applicable to the importation of goods into Canada under Part IX of the Excise Tax Act, and any other special rules under that Part developed for purposes of the PVAT in respect of the Province.
25. Canada will neither assess nor collect under this agreement any product-specific tax, levy or mark-up imposed by the Province in respect of the importation of goods subject to a specific tax collection agreement between Canada and the Province.
26. The PVAT in respect of the Province will not be applicable to the importation into Canada of any goods other than non-commercial imported goods in accordance with the rules under Part IX of the Excise Tax Act, and any other special rules under that Part developed for purposes of the PVAT in respect of the Province.
27. Goods, other than non-commercial imported goods, which are imported into Canada for consumption or use, or for supply in whole or in part, otherwise than in the course of commercial activities, in the Province by a person, will be subject to self-assessment of the PVAT in respect of the Province by the person in accordance with the rules under Part IX of the Excise Tax Act, and any other special rules under that Part developed for purposes of the PVAT in respect of the Province. PVAT in respect of the Province will also apply through the self-assessment provisions under Division IV of that Part.
28. The Province will assess and collect, at the time of vehicle registration in the Province, any PVAT in respect of the Province payable in respect of motor vehicles imported into Canada as non-commercial imported goods.

Part IX

Harmonized Tax Administration

29. The Minister of National Revenue will administer and enforce the harmonized sales taxes payable under Part IX of the Excise Tax Act, which includes the rebates under Annex "B" and the input tax credit recapture and transitional rules under Annex "C". The Parties acknowledge

that Canada will be solely responsible for all costs related to this administration and enforcement, including the collection referred to in clause 30.

30. Notwithstanding clause 29, the Parties acknowledge that, in accordance with section 214 of the Excise Tax Act, the collection of the harmonized sales taxes payable under Division III of Part IX of that Act is a responsibility of the Canada Border Services Agency.

31. The administration and enforcement contemplated by clause 29 and the collection contemplated by clause 30 will be at service and compliance levels mutually agreed upon between the Province and each of the Canada Revenue Agency and the Canada Border Services Agency, respectively. The service and compliance levels relating to matters specific to the PVAT in respect of the Province will be at least as high as those applied to the administration and enforcement of the harmonized sales taxes generally. The service and compliance levels will be documented in a manner agreeable to the Province and each of the Canada Revenue Agency and the Canada Border Services Agency and will be mutually amended on a timeline and by a process agreeable to the Province and each of the Canada Revenue Agency and the Canada Border Services Agency, respectively. The levels of the administration and enforcement contemplated by clauses 29 and 30 will be commensurate with the incremental compliance risk and service requirements associated with the administration of Part IX of the Excise Tax Act pursuant to this Agreement, in relation to other tax programs administered by the Minister of National Revenue and in relation to similar programs administered by the Canada Border Services Agency.

32. Each of the Canada Revenue Agency and the Canada Border Services Agency will discuss work plans, activities and results relating to the service and compliance levels referred to in clause 31 with the Province in a bilateral manner, and with all participating provinces, at the meetings of the Federal-Provincial Tax Administration Liaison Committee referred to in Part X, and will make all reasonable efforts to accommodate concerns expressed by the participating provinces in relation to those work plans, activities and results.

Part X

Federal-Provincial Tax Administration Liaison Committee

33. The Province, together with the other participating provinces, will have the right to be a member of the Federal-Provincial Tax Administration Liaison Committee that deals with the management of administrative matters and consists of representatives from Canada and each participating province. The representatives from Canada on that committee will be officials from each of the Canada Revenue Agency and the Canada Border Services Agency. The Parties agree that the terms of reference of that committee will take into consideration the circumstances of all participating provinces. The Parties agree to work collaboratively, together with the other participating provinces, to establish mechanisms, or agreements, in respect of the functioning of that committee.

Part XI

Human Resources

34. Subject to the provisions in Annex "C" under the heading, "Human Resources", provision for employment by the Canada Revenue Agency or employment at other departments or agencies of Canada for which the Treasury Board is the employer of persons employed by the Province, including the number of such persons, the sequencing and timing of personnel hiring, the work location of service sites and staff, and the conditions of employment, will be set forth in human resource agreements. Provision for the employment by the Canada Revenue Agency of persons employed by the Province will be set forth in a human resource agreement entered into between the Province and the Canada Revenue Agency, as amended from time to time by the parties to that agreement. If necessary, provision for the employment at other departments and agencies of Canada for which the Treasury Board is the employer of persons employed by the Province will be set forth in another human resource agreement entered into between the Province and the appropriate delegates of the Public Service Commission, as amended from time to time by the parties to that agreement.

Part XII

Exchange of Information

35. The Parties agree to co-operate fully in exchanging such information regarding the PVAT in respect of the Province as may be disclosed pursuant to applicable laws and regulations. The specific terms on information exchange, and mutual assistance, between the Canada Revenue Agency and the Province, and between the Canada Border Services Agency and the Province, including the assurance of the timely provision to the Province of available data that is specific to, or otherwise related to, the PVAT in respect of the Province, will be set forth in agreements regarding information exchange and mutual assistance entered into between the Canada Revenue Agency and the Province, and between the Canada Border Services Agency and the Province, as amended from time to time by the parties to those agreements.

36. Any agreement referred to in clause 35 regarding information exchange and mutual assistance will provide for the sharing of confidential information that relates to specific persons in accordance with applicable laws, including section 295 of the Excise Tax Act.

Part XIII

Litigation

37. Canada will be responsible for the conduct of litigation in respect of the harmonized sales taxes.

Part XIV

Dispute Resolution

38. Best efforts will be exercised by federal and provincial officials to reach consensus in respect of issues arising in respect of matters governed by this Agreement.

39. Subject to clause 40, issues not resolved by federal and provincial officials will be referred to the Minister of Finance (Canada) and the Ministers of Finance of the relevant participating provinces.

40. If the issue relates to the administration of the harmonized sales taxes contemplated by clause 29, the issue will be referred to the Minister of National Revenue, the Minister of Finance (British Columbia) and, if applicable, to the appropriate Minister of relevant participating provinces, with notice of same to the Minister of Finance (Canada). If the issue relates to the collection of the harmonized sales taxes contemplated by clause 30, the issue will be referred to the Minister of Public Safety, the Minister of Finance (British Columbia) and, if applicable, to the appropriate Minister of relevant participating provinces, with notice of same to the Minister of Finance (Canada) and the Minister of National Revenue.

41. If an unresolved issue has been referred to the Ministers described in clauses 39 or 40, those Ministers may refer the issue to a third party for consideration and advice.

Part XV

Term, Amendment and Termination

42. The terms and conditions of this Agreement will continue in full force and effect, in accordance with and subject to the provisions of this Part, until the date that is specified by a Party in a written notice that is delivered to the other Party setting out the Party's desire to terminate this Agreement.

43. If the Province desires to amend the PVAT Rate in respect of the Province or to amend an element set out in a provision of Annex "B", or of Annex "C", in respect of which the Province has tax policy flexibility, the Province may, subject to the other provisions of this Agreement, advise Canada of its desire to amend the particular provision and of its proposed effective date of amendment (referred to as the "Proposed Amendment Date") by giving Canada not less than 120 days prior written notice (referred to as the "Amendment Notice") of the proposed amendment and of the Proposed Amendment Date. Notwithstanding the Proposed Amendment Date set out in the Amendment Notice and subject to the terms and conditions of this Agreement, the Parties may mutually agree on an earlier or a later date (referred to as the "Alternate Amendment Date") as the effective date in respect of the Province's proposed amendment.

44. The Parties agree that the Proposed Amendment Date will be the first day of January, April or July or, if mutually agreed upon between the Parties, October.

45. After the Province has given Canada an Amendment Notice in accordance with the provisions of this Part, the Province will, unless otherwise mutually agreed upon between the Parties and subject to the terms and conditions of this Agreement,

- (a) make a public announcement in respect of the Province's proposed amendment at least 60 days prior to the effective date in respect of the Province's proposed amendment; and
- (b) following the public announcement referred to in paragraph (a), table at the earliest opportunity in the Province's legislature an instrument, in respect of the Province's proposed amendment, requesting a timely vote by the Province's legislature.

46. After tabling of the instrument referred to in paragraph 45(b) in accordance with the provisions of this Part, the Parties agree to propose any applicable legislative amendment that may be necessary to implement the Province's proposed amendment in a timely manner and further agree that such proposed legislation will set out the Proposed Amendment Date or the Alternate Amendment Date, as the case may be. If the vote referred to in paragraph 45(b) is unsuccessful, Canada will propose amendments, or take any other actions necessary, to nullify the Province's proposed amendments.

47. Any amendment to this Agreement must be made in writing through mutual agreement of the Parties and subject to any necessary approvals, authorizations or applicable legislative requirements.

48. Any amending document mutually agreed upon between the Parties will form a part of this Agreement and will be effective as of the date specified in that amending document.

49. Either Party may deliver to the other Party a written notice of termination to be effective no sooner than the end of the eighteen month period that immediately follows the last day of the calendar quarter in which the written notice of termination is received or any other time period that may be mutually agreed upon between the Parties. The Parties agree that the termination date set out in such a written notice of termination will be the first day of January, April, July or October and cannot be earlier than the date that is the fifth year anniversary of the Implementation Date.

50. On termination of this Agreement, all rights and obligations of Canada and the Province under this Agreement cease, except for the obligations of Canada and the Province to settle accounts relating to amounts outstanding under this Agreement and any obligations relevant to settling these accounts.

Part XVI

Government Purchases

51. Canada and the Province agree to pay the harmonized sales taxes in respect of supplies acquired by their respective governments or by agents and entities thereof.

52. Where inter-jurisdictional immunity from taxation applies, any harmonized sales taxes paid by Canada or the Province, as provided for in clause 51, will be subject to rebate on application to the Minister of National Revenue, except to the extent that any such taxes are payable under any agreement regarding the reciprocal payment of sales or commodity taxes as between Canada and the Province or are otherwise recoverable.

53. In the case of the provincial government or of agents and entities thereof, any rebates payable under clause 52 shall be made on a bi-weekly basis and, at the direction of the Province, shall be paid either to the Province or to the government entity of the Province which paid the tax and which is identified as the recipient of the rebate in the application therefor.

Part XVII

Province-Specific & Transitional Measures

54. The agreement of the Parties in respect of provincial rebates or of the provincial component of a rebate under Part IX of the Excise Tax Act is set out in Annex "B".
55. The agreement of the Parties in respect of transitional assistance is set out in Annex "C".
56. The agreement of the Parties in respect of input tax credit recapture for PVAT in respect of the Province, including transitional revenues from such recapture, and in respect of other transitional measures, is set out in Annex "C".
57. Intentionally omitted.
58. The Province will make, prior to the Implementation Date, best efforts to wind-down the Provincial Sales Tax of the Province and will take, throughout the term of this Agreement, all actions necessary to ensure that a Provincial Sales Tax of the Province will not be imposed in respect of the consumption, use, supply or importation of property or services in respect of which the CVAT is imposed.
59. The Province will propose legislation that is appropriate or necessary in respect of the transition to the PVAT in respect of the Province in order to give effect to the provisions of this Agreement and to give effect to any other provincially administered measure, unless, in accordance with applicable laws, the Province gives effect to these provisions and measures through other means.

Part XVIII

Audit

60. The Minister of Finance of the Province may designate a person to examine such books and records, excluding any information that is protected by law, as may be relevant in order to permit such person to report in respect of the payments made to the Province under this Agreement.

Part XIX

Miscellaneous

61. If Canada enters into a comprehensive integrated tax coordination agreement with a non-participating province under Part III.1 of the *Federal-Provincial Fiscal Arrangements Act*, R.S.C. 1985, c. F-8, or enters into a successor comprehensive integrated tax coordination agreement with a participating province under that Part, on terms that differ from those of the agreement then in effect between Canada and the Province, the Province will have the option of entering into a succeeding agreement with Canada regarding harmonization on the same terms as those

in the comprehensive integrated tax coordination agreement with the other province; provided, however, that this option of the Province will not apply to any term in respect of a transitional measure contemplated under that comprehensive integrated tax coordination agreement. For the purpose of this clause, a successor comprehensive integrated tax coordination agreement includes an amended comprehensive integrated tax coordination agreement.

62. Unless otherwise mutually agreed upon between the Parties, best efforts will be made to conclude the mechanisms and agreements referred to in clauses 33, 34 and 35 in a timeframe that is consistent with, and no later than, March 31, 2010.

63. If a Party informs the other Party of a proposed change under any of Part IV, Part V or Part XVII of this Agreement that is to be announced publicly by that Party in a Budget or in a similar public announcement, the other Party commits to take all actions necessary to embargo the existence of such a proposal, negotiation or agreement, unless the Parties mutually agree otherwise in writing or unless otherwise required by law. Notwithstanding the embargo commitment referred to in this clause, Canada may, prior to any public announcement of such a proposal, negotiation or agreement, discuss on a need-to-know basis with other federal government departments or agencies (such as the Department of Justice, the Canada Revenue Agency, the Canada Border Services Agency and Statistics Canada) the information required for the purposes of evaluating and developing the processes and mechanisms that may be necessary for proper implementation, administration, enforcement and revenue allocation in respect of such a proposal, negotiation or agreement.

64. This Agreement may be executed in any number of counterparts, each of which will constitute an original and all of which taken together will constitute one and the same instrument. Counterparts may be executed either in original or faxed form and the Parties adopt any signatures received by a receiving fax machine as original signatures of the Parties; provided, however, that a Party providing its signature in such manner will promptly forward to the other Party an original of the signed copy of this Agreement which was so faxed.

65. By entering into this Agreement, neither Party is deemed to surrender or abandon any of the powers, rights, privileges or authorities vested in either of them under the Constitution Acts, 1867-1982 (or under any amendments to those acts) or otherwise, or to impair any of such powers, rights, privileges or authorities.

66. This Agreement, including all Annexes attached, constitutes the entire agreement between the Parties with respect to the subject matter of this Agreement and supersedes all prior agreements and understandings between the Parties with respect to that subject matter.

67. After execution of this Agreement, each Party will do, or cause to be done, all acts as the other Party may reasonably require from time to time for the purpose of giving effect to this Agreement and each Party will use reasonable efforts, and take all steps as may be reasonably within that Party's power, to implement to their full extent the provisions of this Agreement.

68. A Party may waive any right under this Agreement, but only in writing. If a waiver of any provision of this Agreement is executed in writing by a Party, that written waiver will not constitute a waiver of any other provision of this Agreement and will not constitute a continuing waiver unless otherwise expressly provided.

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IN WITNESS WHEREOF, THIS AGREEMENT IS SIGNED IN DUPLICATE, in English
and in French, each version being equally authentic,

THE GOVERNMENT OF CANADA

AT

Ottawa

THIS 27th DAY OF November, 2009

BY

"JAMES M. FLAHERTY"

Minister of Finance for the Government of
Canada

THE GOVERNMENT OF THE PROVINCE OF
BRITISH COLUMBIA

AT

Vancouver

THIS 30th DAY OF November, 2009

BY

"COLIN HANSEN"

Minister of Finance for the Government of
British Columbia

ANNEX "A"

REVENUE ALLOCATION

Preamble

This Annex to the Agreement sets forth the provisions governing the determination of tax revenue, as defined in Part II, and the provincial annual revenue entitlement from tax revenue. Tax revenue consists of the aggregate of the adjusted net tax payable in respect of the CVAT and the PVAT less specified refunds and rebates. Furthermore, the determination of tax revenue takes into account all amounts reported as CVAT and PVAT. The annual revenue entitlement of a province out of tax revenue is determined under Part IV and is based on a share which is a function of the PVAT rate, the CVAT rate, national and provincial economic data provided by Statistics Canada, administrative data provided by the Canada Revenue Agency and the Canada Border Services Agency, and other data sources determined by Finance (Canada). This Annex also sets forth the rules regarding the payment schedule and mechanism, including payment adjustments and the final settlement procedure, with respect to the provincial annual revenue entitlement.

Part I

Interpretation

1. Unless otherwise defined in this Annex, terms used in this Annex have the same meaning as in the Agreement to which this Annex is attached. In this Annex,

"annual revenue entitlement" for a tax entitlement year means the amount determined by the formula:

$$A - B$$

where

- A is the sum of all amounts, as determined under subclause 6(2), of provincial tax revenue payable by Canada to the Province in respect of the tax entitlement year or in respect of a sub-period of the tax entitlement year, and
- B is the sum of all amounts of any provincial rebates in respect of the Province and the tax entitlement year, as determined or estimated by Finance (Canada) in consultation with the Province;

"Customs Act" means the *Customs Act*, R.S.C. 1985, c. 1 (2nd Supp.), as amended from time to time;

"federal rebate" means a rebate of CVAT paid or credited by Canada under section 254, 254.1, 255, 256, 256.2, or 259 of the Excise Tax Act or any other rebate of CVAT that is agreed by Canada and the Province to be a federal rebate for the purposes of this definition;

"harmonized sales taxes" means, in the case of a participating province, the PVAT in respect of the province and the CVAT, and, in the case of a non-participating province, the CVAT;

"province" means a province or territory of Canada;

"provincial rebate" means a rebate of PVAT that

(a) is paid or credited by Canada under sections 254, 254.1, 255, 256, 256.2, 259 or 261.31 of the Excise Tax Act,

(b) is paid or credited by Canada on behalf of a participating province in accordance with legislation or regulations, as amended from time to time, of the participating province that provide for a point-of-sale rebate of PVAT in respect of taxable supplies of certain property or services made in the participating province, or

(c) is agreed by Canada and the Province to be a provincial rebate for the purposes of this definition;

"public service body" means a person that is entitled to claim a rebate in respect of CVAT under section 259 of the Excise Tax Act;

"sub-period" of a tax entitlement year means a sub-period of that year as determined under clause 5.

"tax entitlement year" means a calendar year, except that

(a) if the calendar year includes the Implementation Date, the tax entitlement year shall be the remaining part of the calendar year beginning on the Implementation Date, and

(b) if the calendar year includes a day on which the Province stops being a party to the Agreement, the tax entitlement year shall be the part of the calendar year preceding that day.

Part II

Tax Revenue

2. For the purposes of this Annex and subject to clauses 3 and 4, the tax revenue for a tax entitlement year or for a sub-period of a tax entitlement year, as the case may be, is the amount determined by the formula

$$A - B$$

where

A is the sum of

(a) all amounts of net tax, as or on account of CVAT or the PVAT in respect of any participating province, in respect of the tax entitlement year or sub-period, as determined or estimated by Finance (Canada), and

(b) all amounts deducted or deductible under section 234 of the Excise Tax Act in determining any amount of net tax referred to in paragraph (a), as determined or estimated by Finance (Canada), and

B is the sum of

(c) all amounts of any refund or rebate payable or claimable as or on account of CVAT or the PVAT in respect of any participating province, other than any amount of a federal rebate, a provincial rebate or a refund in respect of a negative amount of net tax, as determined or estimated by Finance (Canada),

(d) all amounts of any rebate paid to Canada or a province (including agents or entities of Canada or of a province) under this Agreement, an agreement similar to this Agreement in effect between Canada and a participating province or an agreement regarding the reciprocal payment of sales or commodity taxes between Canada and a province, as determined or estimated by Finance (Canada), other than any amount of a rebate deducted from tax revenue under paragraph (c), and

(e) all amounts of tax paid by federal departments, as reported to the Canada Revenue Agency by the Department of Public Works and Government Services or as determined or estimated by Finance (Canada), other than any amount of any such tax rebated and deducted from tax revenue under paragraph (c) or (d).

3. In determining tax revenue for a tax entitlement year or for a sub-period of a tax entitlement year, Finance (Canada) shall take into account all amounts reported as CVAT and PVAT, including amounts declared on returns filed with the Canada Revenue Agency or the Canada Border Services Agency under Part IX of the Excise Tax Act, amounts accounted for under the Customs Act in respect of tax under Part IX of the Excise Tax Act and amounts payable as a result of an assessment, reassessment or additional assessment under Part IX of the Excise Tax Act or as a result of a determination, re-determination or re-appraisal under the Customs Act.

4. Tax revenue does not include amounts collected as interest or penalties payable under the Excise Tax Act.

Part III

Segmentation of Tax Revenue

5.(1) For the purposes of this Annex, a tax entitlement year contains one or more sub-periods, each of which commences on a date in that year when one of the following measures becomes effective:

(a) the Implementation Date of the PVAT in respect of the Province;

(b) the beginning of a new tax entitlement year;

(c) the date on which there is a change in the CVAT rate or a PVAT rate of any participating province;

(d) the implementation date of the PVAT in respect of a previously non-participating province;

(e) the date on which a province ceases to be a participating province; or

(f) any other date during the year as may be agreed upon as between Canada and the participating provinces.

(2) A particular sub-period shall end at the time that the next subsequent sub-period commences.

(3) For the purposes of this Annex, notwithstanding any return in which any part of tax revenue in respect of a tax entitlement year or sub-period is reported or any reporting period of any person required to file a return in which any part of tax revenue is to be reported, Finance (Canada) shall allocate tax revenue from a particular reporting period of a person to a tax entitlement year, or to a sub-period, using the following ratio:

$$\frac{\text{NUMDAYS}_p \times \text{AVGTXR}_p}{\sum_{\text{TP}} (\text{NUMDAYS}_p \times \text{AVGTXR}_p)}$$

where

p

means a time period that is a portion of the particular reporting period that is within a particular tax entitlement year or a particular sub-period, as the case may be;

NUMDAYS_p means the number of days in the time period "p";

AVGTXR_p

means the weighted average of the rates of the CVAT and PVATs across Canada as a function of the tax bases of the CVAT and the PVATs with respect to a particular tax entitlement year or a particular sub-period, as the case may be, that contains the time period "p", determined by Finance (Canada) in consultation with the Province and the other participating provinces; and

TP

means the total number of time periods "p" within the particular reporting period.

Part IV

Provincial Revenue Entitlement Under Revenue Allocation

6.(1) In this clause,

"consumer expenditure"

means that part of personal expenditure on consumer goods and services within the Canadian System of National Accounts which represents the expenditures of households and those organizations which are not entitled to any rebate under section 259 of the Excise Tax Act, other than expenditures on residential construction, which includes expenditures on new housing construction, alterations and improvements, and transfer costs;

"i"

identifies a particular province of Canada;

"input-output tables"

means the set of economic accounts which is that part of the Canadian System of National Accounts, representing the input-output structure of the Canadian or provincial economy, as determined by Statistics Canada;

"j"

identifies a particular personal expenditure category within the Provincial Accounts representing personal expenditures on consumer goods and services;

"k"

identifies a particular type of public service body;

"m"

identifies a particular industry or group of industries within the provincial input-output tables of Statistics Canada;

"n"

identifies a particular commodity within the provincial input-output tables of Statistics Canada;

"Provincial Accounts"

means the Provincial Economic Accounts which is that part of the Canadian System of National Accounts, representing the provincial income-based and expenditure-based Gross Domestic Product, as determined by Statistics Canada;

"t"

identifies a particular tax entitlement year other than a tax entitlement year for which the annual revenue entitlement is no longer open to a re-estimate as a result of the limitation imposed under clause 12, except that where the tax entitlement year is subdivided into two or more sub-periods, "t" identifies a particular sub-period of the tax entitlement year;

t^o

identifies the earlier of the last calendar year for which Provincial Accounts data are available from Statistics Canada and the calendar year that includes the tax entitlement year or sub-period "t";

t^{oo}

identifies the earlier of the last calendar year for which provincial input-output tables are available from Statistics Canada and the calendar year that includes the tax entitlement year or sub-period "t"; and

"unrecoverable CVAT"

means CVAT paid or payable in respect of which an input tax credit, or a rebate under section 261.01 of the Excise Tax Act, may not be claimed.

(2) For the purposes of determining the annual revenue entitlement of the Province, the amount of provincial tax revenue payable by Canada to the Province in respect of a particular tax entitlement year, or in respect of a particular sub-period of the tax entitlement year (so as to reflect the segmentation of tax revenue as between particular sub-periods within the particular tax entitlement year), shall be determined as follows:

Formula A

$$\text{PROVREV}_t = \text{TOTREV}_t \times \text{PROVSHARE}_t$$

where

PROVREV_t

means the amount of provincial tax revenue payable to the Province in respect of the particular tax entitlement year or the particular sub-period "t";

TOTREV_t

means the tax revenue for the particular tax entitlement year or the particular sub-period "t"; and

PROVSHARE_t

means the provincial share of tax revenue, as determined by Formula B, in respect of the particular tax entitlement year or the particular sub-period "t".

Formula B

$$\text{PROVSHARE}_t = \frac{(\text{PROVBASE}_t \times \text{PROVRATE}_t)}{\left[(\text{FEDBASE}_t \times \text{FEDRATE}_t) + \sum_i (\text{PROVBASE}_t^i \times \text{PROVRATE}_t^i) \right]}$$

where

PROVBASE_t

means the estimated tax base under the harmonized sales taxes for the Province in the calendar year that includes the particular tax entitlement year or the particular sub-period "t", as determined by Formula D;

PROVRATE_t

means the PVAT rate applicable in the Province in the particular tax entitlement year or the particular sub-period "t";

FEDBASE_t

means the estimated CVAT base in the calendar year that includes the particular tax entitlement year or particular sub-period "t", as determined by Formula C;

FEDRATE_t

means the CVAT rate applicable in the particular tax entitlement year or the particular sub-period "t";

PROVBASE_t^i

means the estimated tax base under the harmonized sales taxes for province "i" in the calendar year that includes the particular tax entitlement year or particular sub-period "t", as determined by Formula D; and

PROVRATE_t^i

means the PVAT rate applicable in province "i" in the particular tax entitlement year or the particular sub-period "t" (the PVAT rate in a non-participating province is zero).

Formula C

$$\text{FEDBASE}_t = \sum_i \text{PROVBASE}_t^i;$$

Formula D

$$\text{PROVBASE}_t^i = \left[\begin{array}{l} (\text{CEBASE}_{t^o}^i \times \delta_{t^o}) \\ + (\text{HOUSINGBASE}_{t^o}^i \times \delta_{t^o}) \\ + (\text{FIBASE}_{t^o}^i \times \delta_{t^o}) + \text{PSBBASE}_{t^o}^i \\ + (\text{BUSBASE}_{t^o}^i \times \delta_{t^o}) \end{array} \right]$$

where

$\text{CEBASE}_{t^o}^i$

means the estimated harmonized sales taxes base for consumer expenditures for province "i" in calendar year "t^o", as determined by Formula E;

δ_{t^o}

means the calibration adjustment factor as determined by Formula K for a calendar year "t^o";

$\text{HOUSINGBASE}_{t^o}^i$

means the estimated harmonized sales taxes base associated with residential construction for province "i" in calendar year "t^o", as determined by Formula F;

$\text{FIBASE}_{t^o}^i$

means the estimated harmonized sales taxes base for listed financial institutions for province "i" for calendar year "t^o", as determined by Formula G;

$\text{PSBBASE}_{t^o}^i$

means the estimated harmonized sales taxes base for public sector bodies for province "i" for calendar year "t^o", as determined by Formula H; and

$\text{BUSBASE}_{t^o}^i$

means the estimated harmonized sales taxes base attributable to taxable supplies acquired for consumption, use or supply in the provision of exempt supplies for province "i" for calendar year "t^o", other than any portion thereof included within $\text{CEBASE}_{t^o}^i$, $\text{HOUSINGBASE}_{t^o}^i$,

$\text{FIBASE}_{t^o}^i$ or $\text{PSBBASE}_{t^o}^i$, as determined by Formula I.

Formula E

$$CEBASE_{t^o}^i = \sum_j NETEXPCE_{t^o}^{i,j} \times \tau_{t^o}^{i,j} \times \Delta_{t^o}^j$$

where

$NETEXPCE_{t^o}^{i,j}$

means the total expenditures in calendar year " t^o " for personal expenditure category " j " in province " i ", exclusive of any federal or provincial commodity or sales tax, other than a federal or provincial sales or commodity tax that is included in the base amount or consideration amount on which CVAT is determined, using the most recent Provincial Accounts data as provided by Statistics Canada;

$\tau_{t^o}^{i,j}$

means the proportion of personal expenditure in a category " j " in province " i " which is subject to CVAT in the calendar year that includes the tax entitlement year or sub-period " t ", as calculated by Statistics Canada, in consultation with Finance (Canada), using detailed commodity expenditure information valued at purchaser's price contained in the latest available provincial input-output tables for calendar year " t^o ", exclusive of any federal or provincial commodity or sales tax, other than a federal or provincial sales or commodity tax that is included in the base amount or consideration amount on which CVAT is determined.

Statistics Canada will be provided with data which describes the degree to which specific commodities within Statistics Canada's provincial input-output tables do not attract the CVAT in the calendar year that includes the tax entitlement year or sub-period " t " as determined by Finance (Canada) in consultation with the Province together with the other participating provinces. This data will allow Statistics Canada to identify the non-taxable expenditures in personal expenditure category " j " in province " i ". Thus, the remaining commodity expenditures in that category " j " would be subject to tax. A particular taxable proportion may be greater than 0%, notwithstanding that the commodity in question is an exempt supply, to reflect taxes levied on the inputs used in the provision of that exempt supply; and

Δ_t^i

means an adjustment to the expenditures captured in personal expenditure category "j", for calendar year "t", as determined by Finance (Canada) in consultation with the Province and the other participating provinces. Such an adjustment factor will exclude expenditures which do not form part of the tax base in the calendar year that includes the tax entitlement year or sub-period "t" derived for consumer expenditures including, but not limited to, those expenditures of public sector bodies which are included in personal expenditures reported by Statistics Canada.

Formula F

$$\text{HOUSINGBASE}_t^i = \frac{\text{HOUSINGGST}_t^i}{\text{AVGFEDTXR}_t^i}$$

where

HOUSINGGST_t^i

means the estimated gross CVAT payable to Canada in calendar year "t" in province "i" associated with expenditures on residential construction, which includes expenditures on new housing construction, alterations and improvements, and transfer costs, prior to taking into account any rebates related to housing payable under the Excise Tax Act, as determined by Finance (Canada) based on data provided by Statistics Canada.

Gross CVAT payable to Canada is determined by taking into consideration CVAT levied on land for new construction as determined by Statistics Canada; and

AVGFEDTXR_t^i

means the CVAT rate in effect throughout calendar year "t" or, where there has been a change in the CVAT rate in that year, the weighted average CVAT rate for that year in province "i", utilized by Statistics Canada in determining HOUSINGGST_t^i , as provided by Statistics Canada.

Formula G

$$FIBASE_{t^0}^i = \frac{GSTFI_{t^0}^i}{AVGFEDTXR2_{t^0}^i}$$

where

$GSTFI_{t^0}^i$

means the unrecoverable CVAT paid or payable by listed financial institutions in calendar year " t^0 " allocated to a particular province " i " as estimated by Finance (Canada) based on information provided by Statistics Canada and the Canada Revenue Agency; and

$AVGFEDTXR2_{t^0}^i$

means the CVAT rate in effect throughout calendar year " t^0 " or, where there has been a change in the CVAT rate in that year, the average CVAT rate across all purchases made by listed financial institutions in that year in province " i " as determined by Finance (Canada) in consultation with the Province and the other participating provinces.

Formula H

$$PSBBASE_{t^0}^i = \sum_k \left[\frac{PSBREBATE_{t^0}^{i,k}}{(AVGFEDTXR3_{t^0}^{i,k} \times PSBRATE_{t^0}^k)} \right]$$

where

$PSBREBATE_{t^0}^{i,k}$

means the CVAT rebate or rebates payable to a public service body type " k " in a particular province " i " in calendar year " t^0 " under section 259 of the Excise Tax Act, as determined by the Canada Revenue Agency;

AVGFEDTXR3_{t^o}^{i,k}

means the CVAT rate in effect throughout calendar year "t^o" or, where there has been a change in the CVAT rate in that year, the average CVAT rate across all purchases by public service body type "k" in that year in province "i", as determined by Finance (Canada) in consultation with the Province and the other participating provinces; and

PSBRATE_{t^o}^k

means the rebate rate applicable under the CVAT in calendar year "t^o" for a public service body type "k" or, where the rebate rate changes in that year, the average rebate rate applicable across all purchases by that type of public service body, as determined by Finance (Canada) in consultation with the Province and the other participating provinces.

Formula I

$$BUSBASE_{t^o}^i = BUSBASE_{t^{oo}}^i \times (1 + BUSGROWTH_{t^o}^i)$$

where

BUSBASE_{t^{oo}}ⁱ

means the estimated harmonized sales taxes base attributable to taxable supplies acquired for consumption, use or supply in the provision of exempt supplies in province "i" for calendar year "t^{oo}", other than any portion thereof that would be included within **CEBASE_{t^{oo}}ⁱ**,

HOUSINGBASE_{t^{oo}}ⁱ, **FIBASE_{t^{oo}}ⁱ** or **PSBBASE_{t^{oo}}ⁱ**, as determined by Formula J; and

BUSGROWTH_{t^o}ⁱ

means the growth in nominal Gross Domestic Product for the province "i", measured at market prices, from calendar year "t^{oo}" to calendar year "t^o", as derived from the latest Provincial Accounts as provided by Statistics Canada.

Formula J

$$BUSBASE_{t^{oo}}^i = \sum_m \left\{ \frac{\left[\sum_n (C_{t^{oo}}^{i,m,n} \times TX_{t^{oo}}^{m,n}) \right] \times \left[\sum_n (O_{t^{oo}}^{i,m,n} \times EX_{t^{oo}}^{m,n} \times D_{t^{oo}}^{i,n} \times OX_{t^{oo}}^{m,n}) \right]}{\sum_n O_{t^{oo}}^{i,m,n}} \right\}$$

where

$C_{t^{oo}}^{i,m,n}$

means the expenditures in the latest available provincial input-output tables on commodity "n" by industry "m" in a particular province "i" valued at purchaser's price in calendar year "t^{oo}", plus any adjustments where required for the value of land that is not reflected in the provincial input-output tables but is included in the base amount or consideration amount on which CVAT is calculated, exclusive of any federal or provincial commodity or sales tax, other than a federal or provincial sales or commodity tax that is included in the base amount or consideration amount on which CVAT is calculated, as determined by Statistics Canada in consultation with Finance (Canada);

$TX_{t^{oo}}^{m,n}$

means the proportion of expenditures ($C_{t^{oo}}^{i,m,n}$) for calendar year "t^{oo}" in the latest available provincial input-output tables in respect of commodity "n" by industry "m" that would be subject to CVAT in the calendar year that includes the tax entitlement year or sub-period "t", regardless of whether input tax credits are claimed or claimable in respect of that tax, as determined by Finance (Canada) in consultation with the Province and the other participating provinces;

$O_{t^{oo}}^{i,m,n}$

means the total value of the output of commodity "n" produced by industry "m" in province "i" in calendar year "t^{oo}" in the latest available provincial input-output tables, as determined by Statistics Canada;

$EX_{t^{oo}}^{m,n}$

means the proportion of the total value of the output of commodity "n" produced by industry "m" for calendar year "t^{oo}" in the latest available provincial input-output tables ($O_{t^{oo}}^{i,m,n}$) that is an exempt supply in the calendar year that includes the tax entitlement year or sub-period "t", as determined by Finance (Canada) in consultation with the Province and the other participating provinces;

$D_{t^{\infty}}^{i,n}$

means the proportion of the total value of the output of commodity "n" in province "i" that is not exported outside of Canada, as determined from the latest available provincial input-output tables for calendar year " t^{∞} " by Statistics Canada in consultation with Finance (Canada); and

$OX_{t^{\infty}}^{m,n}$

means the proportion of the total value of the output of commodity "n" produced by industry "m" in calendar year " t^{∞} " in the latest available provincial input-output tables ($O_{t^{\infty}}^{i,m,n}$) that is not included in the determination of another base for the calendar year that includes the tax entitlement year or sub-period "t", as determined by Finance (Canada) in consultation with the Province and the other participating provinces,

Formula K

$$\delta_{t^o} = \frac{\left\{ \begin{array}{l} \text{STOTREV}_{t^o} \\ - \sum_i \left[\left(\text{PSBBASE}_{t^o}^i \right) \times \left(\begin{array}{l} \text{AVGFEDTXR4}_{t^o}^i \\ + \text{AVGPROVTXR1}_{t^o}^i \end{array} \right) \right] \end{array} \right\}}{\sum_i \left[\left(\begin{array}{l} \text{CEBASER}_{t^o}^i \\ + \text{BUSBASER}_{t^o}^i \\ + \text{HOUSINGBASE}_{t^o}^i \\ + \text{FIBASE}_{t^o}^i \end{array} \right) \times \left(\begin{array}{l} \text{AVGFEDTXR5}_{t^o}^i \\ + \text{AVGPROVTXR2}_{t^o}^i \end{array} \right) \right]}$$

where

STOTREV_{t^o}

means the tax revenue for the tax entitlement year that corresponds to the calendar year "t^o", except that:

a) where that tax entitlement year is segmented into two or more sub-periods and paragraph (b) does not apply, STOTREV_{t^o} means the sum of the tax revenue for each sub-period of that year, and

b) where that tax entitlement year is less than a full calendar year, STOTREV_{t^o} means the tax revenue for the calendar year "t^o", as determined by Finance (Canada) in consultation with the Province and the other participating provinces;

PSBBASE_{t^o}ⁱ

means the estimated harmonized sales taxes base for public sector bodies for province "i" for calendar year "t^o", as determined by Formula H;

AVGFEDTXR4ⁱ_t^o

means the CVAT rate in effect throughout calendar year "t^o" or, where there has been a change in the CVAT rate in that year, the average CVAT rate across the base

PSBBASEⁱ_t^o in province "i" during calendar year "t^o", as determined by Finance (Canada) in consultation with the Province and the other participating provinces;

AVGPROVTXR1ⁱ_t^o

means the PVAT rate in effect throughout calendar year "t^o" in province "i" or, where there has been a change in that PVAT rate in that year, the average PVAT rate across the public sector bodies base in province "i" during a calendar year "t^o", as determined by Finance (Canada) in consultation with the Province and the other participating provinces;

CEBASERⁱ_t^o

means the estimated harmonized sales taxes base for consumer expenditures for province "i" in calendar year "t^o", as determined by Formula L;

BUSBASERⁱ_t^o

means the estimated harmonized sales taxes base attributable to taxable supplies acquired for consumption, use or supply in the provision of exempt supplies in province "i" for calendar year "t^o", other than any portion thereof included within CEBASERⁱ_t^o, HOUSINGBASEⁱ_t^o,

FIBASEⁱ_t^o or PSBBASEⁱ_t^o, as determined by Formula M;

HOUSINGBASEⁱ_t^o

means the estimated harmonized sales taxes base associated with residential construction for province "i" in calendar year "t^o", as determined by Formula F;

FIBASEⁱ_t^o

means the estimated harmonized sales taxes base for listed financial institutions for province "i" for calendar year "t^o", as determined by Formula G;

AVGFEDTXR5ⁱ_t^o

means the CVAT rate in effect throughout calendar year "t^o" or, where there has been a change in the CVAT rate in that year, the average CVAT rate across the base that is the sum of the bases CEBASERⁱ_t^o, BUSBASERⁱ_t^o,

HOUSINGBASEⁱ_t^o, and FIBASEⁱ_t^o during calendar year "t^o", as determined by Finance (Canada) in consultation with the Province and the other participating provinces; and

$AVGPROV\text{TXR}_t^i$ means the PVAT rate in effect throughout calendar year " t " in province " i " or, where there has been a change in that PVAT rate in that year, the average PVAT rate across the base that is the sum of the bases $CEB\text{ASER}_t^i$, $BUS\text{BASER}_t^i$, $HOUSING\text{BASE}_t^i$, and $FIB\text{ASE}_t^i$ in province " i " during calendar year " t ", as determined by Finance (Canada) in consultation with the Province and the other participating provinces.

Formula L

$$CEB\text{ASER}_t^i = \sum_j \text{NETEXPCE}_t^{i,j} \times \tau R_t^{i,j} \times \Delta R_t^j$$

where

$\text{NETEXPCE}_t^{i,j}$

has the same meaning as in Formula E;

$\tau R_t^{i,j}$

means the proportion of personal expenditure in a category " j " in province " i " which is subject to CVAT in calendar year " t ", as calculated by Statistics Canada, in consultation with Finance (Canada), using detailed commodity expenditure information valued at purchaser's price contained in the latest available provincial input-output tables for calendar year " t ", exclusive of any federal or provincial commodity or sales tax, other than a federal or provincial sales or commodity tax that is included in the base amount or consideration amount on which CVAT is determined.

Statistics Canada will be provided with data which describes the degree to which specific commodities within Statistics Canada's provincial input-output tables do not attract the CVAT in calendar year " t " as determined by Finance (Canada) in consultation with the Province together with the other participating provinces. This data will allow Statistics Canada to identify the non-taxable expenditures in personal expenditure category " j " in province " i ". Thus, the remaining commodity expenditures in that category " j " would be subject to tax. A particular taxable proportion may be greater than 0%, notwithstanding that the commodity in question is an exempt supply, to reflect taxes levied on the inputs used in the provision of that exempt supply; and

$\Delta R_{t^{\circ}}^j$

means an adjustment to the expenditures captured in personal expenditure category "j", for calendar year "t^o", as determined by Finance (Canada) in consultation with the Province and the other participating provinces. Such an adjustment factor will exclude expenditures which do not form part of the tax base in calendar year "t^o" derived for consumer expenditures including, but not limited to, those expenditures of public sector bodies which are included in personal expenditures reported by Statistics Canada.

Formula M

$$BUSBASER_{t^{\circ}}^i = BUSBASER_{t^{\circ\circ}}^i \times (1 + BUSGROWTH_{t^{\circ}}^i)$$

where

$BUSBASER_{t^{\circ\circ}}^i$

means the estimated harmonized sales taxes base attributable to taxable supplies acquired for consumption, use or supply in the provision of exempt supplies in province "i" for calendar year "t^o", other than any portion thereof that would be included within $CEBASER_{t^{\circ}}^i$,

$HOUSINGBASE_{t^{\circ}}^i$, $FIBASE_{t^{\circ}}^i$ or

$PSBBASE_{t^{\circ}}^i$, as determined by Formula N; and

$BUSGROWTH_{t^{\circ}}^i$

has the same meaning as in Formula I.

Formula N

$$\text{BUSBASER}_{t^{\circ\circ}}^i = \sum_m \left\{ \frac{\left[\sum_n (C_{t^{\circ\circ}}^{i,m,n} \times \text{TXR}_{t^{\circ\circ}}^{m,n}) \right] \times \left[\sum_n (O_{t^{\circ\circ}}^{i,m,n} \times \text{EXR}_{t^{\circ\circ}}^{m,n} \times D_{t^{\circ\circ}}^{i,n} \times \text{OXR}_{t^{\circ\circ}}^{m,n}) \right]}{\sum_n O_{t^{\circ\circ}}^{i,m,n}} \right\}$$

where

$C_{t^{\circ\circ}}^{i,m,n}$, $O_{t^{\circ\circ}}^{i,m,n}$ and $D_{t^{\circ\circ}}^{i,n}$

have the same meaning as in Formula J;

$\text{TXR}_{t^{\circ\circ}}^{m,n}$

means the proportion of expenditures ($C_{t^{\circ\circ}}^{i,m,n}$) for calendar year " $t^{\circ\circ}$ " in the latest available provincial input-output tables on commodity " n " by industry " m " that would be subject to CVAT in calendar year " $t^{\circ\circ}$ " regardless of whether input tax credits are claimed or claimable in respect of that tax, as determined by Finance (Canada) in consultation with the Province and the other participating provinces;

$\text{EXR}_{t^{\circ\circ}}^{m,n}$

means the proportion of the total value of the output of commodity " n " produced by industry " m " for calendar year " $t^{\circ\circ}$ " in the latest available provincial input-output tables

($O_{t^{\circ\circ}}^{i,m,n}$) that is an exempt supply in calendar year " $t^{\circ\circ}$ ", as determined by Finance (Canada) in consultation with the Province and the other participating provinces; and

$\text{OXR}_{t^{\circ\circ}}^{m,n}$

means the proportion of the total value of the output of commodity " n " produced by industry " m " in calendar year " $t^{\circ\circ}$ " in the latest available provincial input-output tables

($O_{t^{\circ\circ}}^{i,m,n}$) that is not included in the determination of another base for calendar year " $t^{\circ\circ}$ ", as determined by Finance (Canada) in consultation with the Province and the other participating provinces.

(3) The amount of tax revenue retained by Canada in respect of a particular tax entitlement year, or in respect of a particular sub-period of the year (so as to reflect a segmentation of tax revenue as between particular sub-periods within the particular tax entitlement year), shall be determined as follows:

$$\text{FEDREV}_t = \text{TOTREV}_t \times \text{FEDSHARE}_t$$

where

$$\text{FEDSHARE}_t = \frac{(\text{FEDBASE}_t \times \text{FEDRATE}_t)}{\left[(\text{FEDBASE}_t \times \text{FEDRATE}_t) + \sum_i (\text{PROVBASE}_i \times \text{PROVRATE}_i) \right]}$$

Part V

Arrangements with Finance (Canada)

Statistics Canada

7. Statistics Canada has confirmed to Finance (Canada) that, subject to any disclosure restriction imposed under the *Statistics Act*, R.S.C. 1985, c. S-19, as amended from time to time, the Chief Statistician of Canada will provide to Finance (Canada) all of the available and released data required by the formulae contained in this Annex. If disclosure restrictions do apply, Statistics Canada will perform the calculations set forth in this Annex that are necessary so that the disclosure restrictions are satisfied and, thereafter, release the information to Finance (Canada). In addition, the Chief Statistician of Canada will provide to Finance (Canada) a certificate for each calendar year attesting that the data provided by Statistics Canada under this Annex for that year is the most recent information that has been released by Statistics Canada.

The Canada Revenue Agency

8. The Canada Revenue Agency has confirmed to Finance (Canada) that, subject to any disclosure restriction imposed under the *Excise Tax Act*, it will provide to Finance (Canada) all of the available data required by the formulae contained in this Agreement. If disclosure restrictions do apply, the Canada Revenue Agency will provide the information in summary form with sufficient detail so that the disclosure restrictions are satisfied and Finance (Canada) is able to perform the calculations set forth in this Agreement. In addition, the Canada Revenue Agency will provide to Finance (Canada) a certificate for each calendar year attesting to the reliability of the data provided by the Canada Revenue Agency under this Agreement for that year.

The Canada Border Services Agency

9. The Canada Border Services Agency has confirmed to Finance (Canada) that, subject to any disclosure restriction imposed under the Excise Tax Act or the Customs Act, it will provide to Finance (Canada) all of the available data required by the formulae contained in this Agreement. If disclosure restrictions do apply, the Canada Border Services Agency will provide the information in summary form with sufficient detail so that the disclosure restrictions are satisfied and Finance (Canada) is able to perform the calculations set forth in this Agreement. In addition, the Canada Border Services Agency will provide to Finance (Canada) a certificate for each calendar year attesting to the reliability of the data provided by the Canada Border Services Agency under this Agreement for that year.

Part VI

Harmonized Tax Payments

Payment Date

10.(1) Canada shall make instalment payments to the Province in respect of the annual revenue entitlement for a tax entitlement year, each of which is for the amount determined under subclause 11(10), pursuant to the following schedule:

- (a) one payment on the first business day of each month in the tax entitlement year;
- (b) one payment on the first business day following the eighth day of each month in the tax entitlement year;
- (c) one payment on the first business day following the fifteenth day of each month in the tax entitlement year; and
- (d) one payment on the first business day following the twenty-third day of each month in the tax entitlement year.

(2) The official estimate of the annual revenue entitlement will not be adjusted to account for the time-value of the payment schedule

Payment Amount

11.(1) The first official estimate of the annual revenue entitlement for a tax entitlement year will be made at least 10 days prior to the date on which the first payment for that tax entitlement year is due, as determined under clause 10.

(2) During a tax entitlement year, there will be a minimum of one official re-estimate of the annual revenue entitlement for that tax entitlement year with the first re-estimate occurring before June 1st. If the tax entitlement year is subdivided into two or more sub-periods, an official re-estimate of the annual revenue entitlement for the tax entitlement year will be made prior to the beginning of the second sub-period in the tax entitlement year and prior to the beginning of each subsequent sub-period in the tax entitlement year.

(3) Any official re-estimate of the annual revenue entitlement for a tax entitlement year performed under subclause (2) will result in an equal adjustment to each of the remaining payments for that tax entitlement year, beginning on the first business day of the month

following the month in which the re-estimate occurred (referred to in this clause as an "adjustment day"), so that the total payments over that tax entitlement year equals the re-estimated annual revenue entitlement.

(4) Subject to the provisions establishing a limitation date regarding further adjustments to the annual revenue entitlement for a particular tax entitlement year set out in clause 12, the annual revenue entitlement for tax entitlement years prior to the current tax entitlement year shall be subject to a minimum of one re-estimate or reconciliation each year, and adjusted where necessary, to reflect more recent data in respect of the particular prior year. Any such adjustment is referred to in this clause as a "prior-year adjustment".

(5) In subclauses (6) to (9) and in Part IX, "aggregate prior-year adjustment" means the sum of the most recent prior-year adjustments for each tax entitlement year for which there is not a final re-estimate, as set out in clause 12.

(6) If the result of an aggregate prior-year adjustment is that an amount remains payable to the Province, $1/48^{\text{th}}$ of the amount shall be added to

(a) the particular instalment payment that is on the earlier of the first adjustment day following the prior-year adjustment and the first business day of January of the first calendar year following the prior-year adjustment; and

(b) each of the forty-seven instalment payments following the particular instalment payment.

(7) If the result of a prior-year adjustment relating to a final re-estimate made under clause 12 for a tax entitlement year is that an amount remains payable to the Province, $1/48^{\text{th}}$ of the amount shall be added to

(a) the particular instalment payment that is on the earlier of the first adjustment day following the prior-year adjustment and the first business day of January of the first calendar year following the prior-year adjustment; and

b) each of the forty-seven instalment payments following the particular instalment payment.

(8) If the result of an aggregate prior-year adjustment is that there has been an aggregate overpayment to the Province

(a) unless paragraph (b) applies, $1/48^{\text{th}}$ of the amount of the overpayment shall be deducted from

(i) the particular instalment payment that is on the earlier of the first adjustment day following the prior-year adjustment and the first business day of January of the first calendar year following the prior-year adjustment; and

(ii) each of the forty-seven instalment payments following the particular instalment payment.

(b) if the overpayment is equal to or greater than 7% of the first official estimate of the annual revenue entitlement for the upcoming entitlement year and the Province requests

that this paragraph apply in respect of the overpayment, $1/144^{\text{th}}$ of the amount of the overpayment shall be deducted from

(i) the particular instalment payment that is on the earlier of the first adjustment day following the prior-year adjustment and the first business day of January of the first calendar year following the prior-year adjustment; and

(ii) each of the one hundred and forty-three instalment payments following the particular instalment payment.

(9) If the result of a prior-year adjustment relating to a final re-estimate made under clause 12 for a tax entitlement year is that there has been an overpayment to the Province in respect of the annual revenue entitlement for that tax entitlement year, $1/48^{\text{th}}$ of the amount of the overpayment shall be deducted from

(a) the particular instalment payment that is on the earlier of the first adjustment day following the prior-year adjustment and the first business day of January of the first calendar year following the prior-year adjustment; and

(b) each of the forty-seven instalment payments following the particular instalment payment.

(10) Each instalment payment in respect of the annual revenue entitlement for a tax entitlement year to be paid by Canada to the Province will be determined as follows:

$$(A / B) + C + D$$

where

- A is the first official estimate of the annual revenue entitlement for the tax entitlement year made under subclause (1);
- B is the number of instalment payments to be made to the Province during the tax entitlement year;
- C is the sum of the adjustments made under subclause (3) to the instalment payment arising from re-estimates of the annual revenue entitlement for the tax entitlement year; and
- D is the sum of the adjustments made under subclauses (6) to (9) to the instalment payment arising from prior-year adjustments, including prior-year adjustments arising from final re-estimates.

Final Adjustments

12.(1) Subject to subclause (2), the final re-estimate of the annual revenue entitlement for a tax entitlement year shall be determined using the most current data in respect of the tax entitlement year that is available as of 120 days after the end of the fifth calendar year beginning after the tax entitlement year.

(2) At least six months before the first day of any particular tax entitlement year that begins at least five calendar years after the Implementation Date, the Province may deliver to Finance

(Canada) a written notice of its desire to have a four-year adjustment period apply to the particular tax entitlement year and to all subsequent tax entitlement years. In this case, the final re-estimate of the annual revenue entitlement for the particular tax entitlement year and all subsequent tax entitlement years shall be determined using the most current data in respect of the tax entitlement year that is available as of 120 days after the end of the fourth calendar year beginning after the tax entitlement year.

(3) The re-estimated annual revenue entitlement and reconciliation referred to in subclause (1) or (2), as applicable, will be determined no later than the particular day that is one month after Finance (Canada) has received all relevant data and will be final and not subject to revision after the day that is 60 days after that particular day.

Part VII

Application of the Revenue Allocation Formula under Parameter Changes

Changes in Rates

13. If there is a change to either the CVAT rate or the PVAT rate of a participating province in a tax entitlement year, the share of tax revenue of Canada and of each participating province for that tax entitlement year will be re-calculated to account for the rate change and be effective as of the effective date of the rate change.

Changes in Rebates or the Harmonized Tax Base

14. If there is a change to either the harmonized sales taxes base or a rebate of PVAT or CVAT in a tax entitlement year, the share of tax revenue of Canada and of each participating province for that tax entitlement year will be re-calculated to account for the change at the time of the next re-estimate.

Part VIII

Information Requirements Pertaining to Revenue Allocation

Statistics Canada

15. A copy of all information, including certificates, provided by Statistics Canada to Finance (Canada) for the purposes of this Agreement shall be provided to the Province upon receipt.

Finance (Canada)

16. Finance (Canada) shall provide to the Province in a timely fashion:

(a) booklets, in printed or in electronic form (or both, where available), including the estimates and re-estimates in respect of revenue entitlements and the details of the derivation of the payment amounts made in accordance with clause 11;

(b) a monthly statement of payments made to the Province in respect of the current tax entitlement year; and

(c) detailed information with respect to the estimated tax revenue and any changes to such an estimate.

Part IX

Transitional Measures

Adjustments to Tax Revenue and Annual Revenue Entitlement

17. Finance (Canada), in consultation with the Province, may make any adjustments to the tax revenue for any tax entitlement year or any sub-period of a tax entitlement year or to the annual revenue entitlement of the Province for any tax entitlement year that are necessary in order to account for any measures related to the implementation of the PVAT in respect of the Province, the winding down of the Provincial Sales Tax of the Province, a change in the PVAT Rate in respect of the Province or the winding down of the PVAT in respect of the Province, such that the net revenues from those measures are properly added to or deducted from the tax revenues and the annual revenue entitlements of the Province.

18. For greater certainty, the adjustments in clause 17 do not include any amounts included in elements A or B of clause 25 of Annex C to the Agreement or any other amounts related to the Province's general transitional rules relating to the winding down of the Provincial Sales Tax of the Province or the implementation of the PVAT in respect of the Province, except for adjustments to the tax revenue that are necessary to account for measures related to the Province's transitional rules in respect of residential housing and to ensure that the annual revenue entitlements of the other participating provinces are not affected by those measures.

First Payment

19. For greater certainty, Canada shall make the first instalment payment to the Province for the first tax entitlement year to which the Agreement applies on July 2, 2010 or, if the Implementation Date is not July 1, 2010, on the first business day that is on or after the Implementation Date. Each successive instalment payment for the first tax entitlement year shall be made to the Province in accordance with the schedule set out in subclause 10(1).

Mid-Year Re-estimates

20. Notwithstanding subclause 11(2), if a tax entitlement year is six months or less in length, no official re-estimate of the annual revenue entitlement for that year is required during that year.

Winding-Down of PVAT

21. If the Agreement is terminated for any reason, the Parties agree that, notwithstanding any other clause of the Agreement, the terms and conditions of this Annex will remain in full force and effect until all final re-estimates for all tax entitlement years of the Province are finalized under clause 12.

22. Notwithstanding clause 11, if an aggregate prior-year adjustment, or a prior-year adjustment relating to a final re-estimate for a tax entitlement year, is determined before the day on which the Agreement is terminated, the result of the adjustment is that an amount remains payable to the Province and all or a part of the amount has not been added to the instalment payments made to the Province on or before that day, Canada shall pay the amount or part, as the case may be, to the Province on the first business day following that day.

23. Notwithstanding clause 11, if an aggregate prior-year adjustment, or a prior-year adjustment relating to a final re-estimate for a tax entitlement year, is determined before the day on which the Agreement is terminated, the result of the adjustment is that there has been an overpayment to the Province and all or a part of the overpayment has not been deducted from the instalment payments made to the Province on or before that day, the amount or part, as the case may be, becomes due and payable by the Province as a debt due to Canada on the first business day following that day.

24. Notwithstanding clause 11, if an aggregate prior-year adjustment, or a prior-year adjustment relating to a final re-estimate for a tax entitlement year, is determined after the day on which the Agreement is terminated and the result of the adjustment is that an amount is payable to the Province, Canada shall pay the amount to the Province on the first business day of the month following the adjustment.

25. Notwithstanding clause 11, if an aggregate prior-year adjustment, or a prior-year adjustment relating to a final re-estimate for a tax entitlement year, is determined after the day on which the Agreement is terminated and the result of the adjustment is that there has been an overpayment to the Province, the amount of the overpayment becomes due and payable by the Province as a debt due to Canada on the first business day of the month following the adjustment.

ANNEX "B"

PROVINCIAL FLEXIBILITY IN RESPECT OF REBATES

Definitions

1. Unless otherwise defined in this Annex, terms used in this Annex have the same meaning as in the Agreement to which this Annex is attached. For the purposes of this Annex, the following terms have the following meanings:

"GST Base" in respect of the Province for a calendar year means the estimated tax base under the harmonized sales taxes for the Province in the calendar year, as determined by Finance (Canada) pursuant to Formula D of Annex "A" (referred to in that Annex as "PROVBASE_i").

"PVAT-POS Rebate", in respect of a province, and in relation to a taxable supply of property or a service made in the province, means the provincial rebate under an Act of the Legislature of the province paid to, or credited at the time of supply in favour of, the recipient of the taxable supply, the amount of which the supplier is permitted to deduct in computing the supplier's net tax under Part IX of the Excise Tax Act.

Provincial Point-of-Sale Rebates

2. The Parties agree that a supply of property or a service may be eligible for a PVAT-POS Rebate in respect of the Province if:

- (a) subject to the reasonable capacity of the Minister of National Revenue to administer and enforce such a PVAT-POS Rebate and subject to the reasonable capacity of businesses to comply with such a PVAT-POS Rebate, the definition of the property or service is used in the Canadian System of National Accounts and sufficient data is available from that system to determine the amount of expenditure in the Province attributable to the supply of that property or service; or
- (b) other data sources, definitions and methodologies mutually agreed upon between the Parties can be used to determine the amount of expenditure in the Province attributable to the supply of that property or service.

3. Where the Province advises Canada of its desire to designate particular property or services as items eligible for a PVAT-POS Rebate in respect of the Province effective on and from a particular day, the Parties agree that the Province will be permitted to designate those property and services as such items if the total value, as determined by Finance (Canada) in consultation with the Province, of all such items that would be eligible for a PVAT-POS Rebate in respect of the Province immediately after the particular day (including the particular property or services) and that were supplied in the Province during the last calendar year for which the GST Base in respect of the Province has been determined, in accordance with Annex "A", does not exceed 5% of that GST Base.

4. If a condition under clause 2 in respect of data or definitions is not met, any cost involved in obtaining or establishing such data or definitions for the purpose of achieving the mutual agreement of the Parties referred to in that clause will be the sole responsibility of the Province.

If obtaining or establishing such data or definitions benefits the Province and another participating province, the Province may enter into a separate agreement with the other participating province in respect of sharing, between the Province and the other participating province, the cost involved in obtaining or establishing such data or definitions.

5. On and from the Implementation Date, subject to the definitions mutually agreed upon between the Parties, the Parties agree that in general terms the items eligible for a PVAT-POS Rebate in respect of the Province will be, unless such items are removed in accordance with the Agreement:

- (a) books;
- (b) children's clothing and footwear;
- (c) children's diapers;
- (d) children's car seats and car booster seats;
- (e) feminine hygiene products;
- (f) motor fuels; and
- (g) other property or service proposed from time to time by the Province that may, in accordance with the Agreement, become property or service eligible for a PVAT-POS Rebate in respect of the Province.

6. Unless otherwise mutually agreed upon between the Parties, where an item that the Province proposes to be eligible for a PVAT-POS Rebate in respect of the Province is of the same class or kind as an existing item that is subject to an existing PVAT-POS Rebate in respect of another province, the Province agrees that the proposed item will have the same definition as the existing definition in respect of the existing item.

Provincial Component of Rebates under the Excise Tax Act

7. Where the Province advises Canada of its desire to offer a rebate of the PVAT in respect of the Province payable by certain public service bodies, the Parties agree that the Province will be permitted to designate the rate of the rebate of the PVAT in respect of the Province payable to the public service body if all other variables in respect of the proposed rebate payable to the public service body, including all administrative, structural and definitional parameters, match the framework and rules set out under Part IX of the Excise Tax Act in respect of a CVAT rebate for any of those public service bodies.

8. On and from the Implementation Date, subject to the definitions under Part IX of the Excise Tax Act and unless otherwise amended in accordance with the Agreement, the Parties agree that the applicable rates of the rebates of the PVAT in respect of the Province in respect of certain public service bodies will be:

- (a) in the case of municipalities, 75%; and
- (b) in the case of charities and qualifying non-profit organizations, 57%

9. Where the Province advises Canada of its desire to offer a rebate of the PVAT paid in respect of new housing, new rental housing or land for residential use, as contemplated in Part IX of the Excise Tax Act, the Parties agree that the Province will be permitted to designate the rate of the rebate of the PVAT in respect of the Province payable in respect of that new housing, new rental housing or land for residential use, the threshold amount in respect of which such a rebate will apply, including the phasing-out (if any) of such a rebate, and the maximum amount of such a rebate that may become payable if all other variables in respect of the proposed rebate payable in respect of that new housing, new rental housing or land for residential use, including all administrative, structural and definitional parameters, match the framework and rules set out in Part IX of the Excise Tax Act in respect of a CVAT rebate for that new housing, new rental housing or land for residential use.

10. On and from the Implementation Date, subject to the definitions under Part IX of the Excise Tax Act and unless otherwise amended in accordance with the Agreement, the Parties agree that the applicable rates, thresholds, phasing-outs and maximum amounts of the PVAT rebates payable in respect of certain new housing, new rental housing or land for residential use, as permitted under clause 9, will be as follows:

- (a) the rebate rate will be 71.43% of the PVAT;
- (b) the rebate will apply without a phase-out;
- (c) the maximum amount of a rebate will be \$26,250; and
- (d) notwithstanding paragraph (c), the maximum amount of a rebate may be less than \$26,250 if the rebate claimant has not paid PVAT on both land and the building portion of housing.

11. Canada may propose any change, and formulate any new rule, in respect of a CVAT rebate under Part IX of the Excise Tax Act and, notwithstanding the provisions under clauses 7 to 10, the Province agrees to be bound by any such change or rule that may affect the provincial component of rebates referred to in those clauses.

12. The Parties acknowledge that the provision under clause 11 will operate in a manner consistent with the Province's flexibility under clauses 7 to 10.

ANNEX "C"

TRANSITIONAL MEASURES IN RESPECT OF THE PROVINCE

Interpretation

1. Unless otherwise defined in this Annex, terms used in this Annex have the same meaning as in the Agreement to which this Annex is attached.
2. The Parties agree that:
 - (a) the transitional measures set out in this Annex are available to the Province as a consequence of the Province's commitment to transition from a retail sales tax in respect of the Province that applies to a broad base of property or services to the PVAT in respect of the Province; and
 - (b) absent such commitment, such transitional measures would not be available to the Province.
3. For greater certainty, transitional measures in the nature of those set out in this Annex are not available to a participating province that, unlike the Province, is not in the process of transitioning from a retail sales tax that applies to a broad base of property or services to a PVAT in respect of the participating province.

Transitional Assistance

4. The Parties acknowledge that the effective implementation of the PVAT in respect of the Province and the winding-down of the Provincial Sales Tax administration in the Province will require substantial investments from each Party. The Parties further recognize and acknowledge that:
 - (a) an integrated tax system will support broader economic growth and job creation in both Canada and the Province; and
 - (b) in particular, transitioning to the PVAT in respect of the Province would support economic growth and job creation in the Province.
5. On the terms and subject to the fulfillment of the conditions set out in the provisions of this Annex under the heading, "Transitional Assistance", Canada agrees to provide, and the Province agrees to accept, in order to support the transition associated with the implementation of the PVAT in respect of the Province and the winding-down of the Provincial Sales Tax administration in the Province referred to in clause 4 and to support economic growth and job creation that arise as a consequence of the transitioning referred to in that clause, the transitional assistance set out in clause 6.
6. The total transitional assistance (referred to as the "Assistance Amount") payable by Canada to the Province under the Agreement will be \$1,599 million, pursuant to the provisions in clause 7 or 8, as the case may be, and subject to any adjustment or indemnity in accordance with clauses 10 to 17.

7. Portions of the Assistance Amount will become payable as and when agreed upon between the Parties from time to time, provided that such portions, in total, will not exceed \$1,599 million. Failing such an agreement between the Parties in respect of the sum and timing for any such portion, the Parties agree that the Assistance Amount will be payable in accordance with, and subject to, the payment schedule set out in clause 8.

8. If the Province is not considered to have, at or before the time set forth in the table below, committed a material breach of the Agreement, Canada will, at that time, pay to the Province the amount set opposite that time in the table to be applied toward satisfaction of the Assistance Amount:

Time	Amount
▪ within 7 days of the tabling by the Province of legislation to wind-down the Provincial Sales Tax of the Province	▪ \$750 million
▪ on the first business day following the Implementation Date	▪ \$374 million
▪ on the first business day following the day that is one year after the Implementation Date	▪ \$475 million

9. Where Canada has, at a particular time, provided written notice to the Province (referred to as an "Effective Notice") that Canada considers the Province to have committed a material breach of the Agreement, for purposes of the provisions of this Annex under the heading, "Transitional Assistance", the Province will be considered to have, at the particular time, committed a material breach of the Agreement if:

- (a) the Province has, at or before the particular time, committed a material breach of the Agreement; and
- (b) the Province
 - (i) has not, within 60 days of the particular time, commenced reasonable steps to fully effect a cure or remedy of the material breach, or
 - (ii) has not, within 180 days of the particular time, remedied or cured the material breach.

10. A Party will, prior to giving written notice to the other Party that the Party considers the other Party to have committed a material breach of the Agreement, consult with the other Party in respect of the material breach and, during that consultation, discuss the circumstance or action that, in the Party's opinion, constitutes the material breach by the other Party.

11. Notwithstanding clause 49 of the Agreement, if, within 60 days of Canada's provision of an Effective Notice in respect of a material breach, the Province does not commence reasonable

steps to fully effect a remedy or cure of the material breach that remedy or cure the material breach within 180 days of Canada's provision of the Effective Notice, Canada's provision of the Effective Notice will constitute Canada's delivery to the Province of a written notice of termination.

12. Notwithstanding clause 11, where Canada has, at a particular time, provided an Effective Notice in respect of a material breach and the Province has not, within 60 days of the particular time, commenced reasonable steps to fully effect a remedy or cure of the material breach, but the material breach is remedied or cured within 180 days of the particular time, the Parties agree that Canada's provision of the Effective Notice in respect of the material breach will not constitute Canada's delivery to the Province of a written notice of termination.

13. Termination of the Agreement in accordance with clause 11 will be effective no sooner than the end of the eighteen month period that immediately follows the last day of the calendar quarter in which the Effective Notice is received. The Parties agree that the effective date of a termination in accordance with clause 11 will be the first day of January, April, July or October.

14. If, within 180 days of Canada's provision of an Effective Notice in respect of a material breach, the material breach has not been remedied or cured, the Province will indemnify Canada in an amount equal to the portion of the Assistance Amount (referred to as the "Indemnity") that the Province received under the Agreement. The Parties agree that, on the day (referred to as the "Day of Indemnity") that is 180 days after Canada's provision of the Effective Notice, the Indemnity will become immediately due and payable by the Province as a debt due to Canada. The Parties acknowledge that the Indemnity provided for under this clause is to compensate Canada for its loss and the impact on national economic growth and job creation.

15. If the Indemnity is not paid to Canada on or before the Day of Indemnity, Canada will be entitled to set off any amount of the Indemnity owed or payable to Canada at any time under the provisions of this Annex under the heading, "Transitional Assistance" against any amount due, or becoming due, to the Province from Canada for any reason and at any time, until the Indemnity is fully paid to Canada and Canada has been fully indemnified by the Province. This right of set-off will survive any termination of the Agreement.

16. Notwithstanding clause 14 and subject to clause 17, the Indemnity will not become, at a particular time, immediately due and payable by the Province as a debt due to Canada if, at or before the particular time:

- (a) the Province has provided written notice to Canada that the Province considers Canada to have committed a material breach of the Agreement;
- (b) Canada has committed the material breach referred to in paragraph (a); and
- (c) Canada has not cured or remedied that material breach.

17. If, on the particular day that is 180 days after July 1, 2010 or after another date mutually agreed upon between the Parties, the PVAT in respect of the Province has not been implemented, the Parties agree that all portions (referred to as the "Pre-Implementation Assistance") of the Assistance Amount that the Province received under the Agreement will become immediately due and repayable by the Province as a debt due to Canada and if, within 30 days of that particular day, the Pre-Implementation Assistance has not been paid to Canada, Canada will be entitled to set off any amount of the Pre-Implementation Assistance owed or payable to Canada at any time under this clause against any amount due, or becoming due, to

the Province from Canada for any reason and at any time, until the Pre-Implementation Assistance is fully paid to Canada. This right of set-off will survive any termination of the Agreement.

Input Tax Credit Recapture for PVAT in respect of the Province

18. Where the Province provides Canada, prior to the date this Agreement is entered into, with a defined class of specified persons in respect of whom, and a select list of specified property and specified services in respect of which, the Province desires a payment by each of those specified persons of an amount equivalent to input tax credits of the specified person, at a specified percentage, relating to PVAT in respect of the Province on the specified property and specified services, the Parties agree that, for a period of five years commencing on the Implementation Date (referred to as the "ITC Repayment Period"), an amount equivalent to those input tax credits will be paid at the specified percentage of 100% by those specified persons in respect of that specified property and those specified services if, with all the necessary changes that the circumstances may require, the scope of those specified persons, that specified property and those specified services, captured during the ITC Repayment Period, does not exceed the scope of the persons, property and services that are denied input tax refunds in respect of the Quebec Sales Tax, pursuant to *An Act Respecting the Quebec Sales Tax*, R.S.Q c. T-0.1, as it read on March 10, 2009.

19. The Parties agree that the definitions established, as of the commencement of the ITC Repayment Period, in respect of the defined class of specified persons, and the select list of specified property and specified services, referred to in clause 18, will not, during the term of the ITC Repayment Period and of the Phase-Out Period (within the meaning of clause 20), be amended, unless otherwise mutually agreed upon between the Parties.

20. Upon completion of the ITC Repayment Period, the Parties agree that the obligation of specified persons to pay an amount equivalent to input tax credits as contemplated under clause 18 will, during a period of three years (referred to as the "Phase-Out Period") immediately following the ITC Repayment Period, be phased-out in equal annual proportions.

21. Subject to the amendment provisions set out in Part XV of the Agreement and as the fiscal circumstances of the Province allow, the Province will:

- (a) shorten the Phase-Out Period; and
- (b) subject to mutual agreement of the Parties, take other steps to advance the elimination of payment of amounts equivalent to input tax credits.

22. If the Province shortens the Phase-Out Period in accordance with clause 21, the Parties agree that any such shortened period must, unless otherwise mutually agreed upon between the Parties, begin on the first day of July and end on the last day of June.

23. On and from the Implementation Date, subject to the definitions mutually agreed upon between the Parties and unless otherwise amended in accordance with the Agreement, the Parties agree that in general terms the items on the select list of specified property and specified services will be:

- (a) energy, except where purchased by farms or used to produce goods for sale;

- (b) telecommunication services other than internet access or certain toll-free numbers;
- (c) road vehicles weighing less than 3,000 kg (and parts and certain services) and fuel to power those vehicles; and
- (d) food, beverages and entertainment.

24. On and from the Implementation Date, subject to the definitions mutually agreed upon between the Parties and unless otherwise amended in accordance with the Agreement, the Parties agree that in general terms the defined class of specified persons will be businesses with annual taxable sales in excess of \$10 million and financial institutions.

Revenues and Expenses related to Transitional Measures

25. For each particular month, Canada shall determine the positive or negative amount (referred to as the "Transitional Measures Monthly Amount") determined by the formula

$$A - B$$

where

A is the aggregate of all amounts assessed or reassessed under the Excise Tax Act during the particular month in respect of any reporting period on account of

- (a) amounts required to be paid, in accordance with clauses 18 to 24, by specified persons that are equivalent to all or a part of input tax credits of the specified persons relating to PVAT in respect of the Province on specified property or specified services, or
- (b) amounts of a transitional tax adjustment in respect of housing the supply of which is not subject to the PVAT in respect of the Province and the possession and ownership of which are both transferred on or after the Implementation Date,

after taking into account any credits, reductions, deductions, rebates and remissions that are applicable in respect of amounts described in paragraph (a) or (b) during the particular month, and

B is the aggregate of

- (c) all amounts assessed or reassessed under the Excise Tax Act during the particular month in respect of any reporting period on account of particular amounts of Social Services Tax transitional housing rebates in respect of newly constructed or substantially renovated housing that is completed in full or in part prior to the Implementation Date and is subject to PVAT in respect of the Province or to the transitional tax adjustment described in paragraph (b), and
- (d) all amounts that are particular amounts of PVAT in respect of the province that would have become payable in respect of supplies of newly constructed or substantially renovated housing the agreement for which was entered into on or before June 18, 2009 and the ownership and possession of which are both transferred on or after the Implementation Date, if PVAT in respect of the Province applied in respect of such

supplies, and are derived from amounts reported in returns or rebate applications processed by the Canada Revenue Agency during the particular month,

after taking into account any adjustments that are applicable in respect of the particular amounts described in paragraph (c) or (d) during the particular month.

For greater certainty, elements A and B do not include any other amounts related to the Province's general transitional rules in respect of the implementation of the PVAT in respect of the Province or the winding-down of the Provincial Sales Tax of the Province.

26. For greater certainty, for the purposes of clause 25 an amount reassessed under the Excise Tax Act means the positive or negative amount that is the difference between the amount of the reassessment and the amount of the previous assessment or previous reassessment, as the case may be, to which the reassessment relates.

27. For greater certainty, Transitional Measures Monthly Amounts do not include amounts assessed or collected as interest or penalties payable under the Excise Tax Act.

28. If the Transitional Measures Monthly Amount for a particular month is greater than zero, that Amount shall be added to the instalment payment that is payable by Canada to the Province pursuant to Annex "A" to the Agreement on the first business day following the twenty-third day of the month following the particular month.

29. If the Transitional Measures Monthly Amount for a particular month is less than zero, that Amount shall be deducted from the instalment payment that is payable by Canada to the Province pursuant to Annex "A" to the Agreement on the first business day following the twenty-third day of the month following the particular month.

30. Transitional Measures Monthly Amounts shall not be adjusted to account for the time-value of the payment schedule set out in clauses 28 and 29.

31. For each month, Canada shall provide to the Province in a timely fashion a statement of the determination of the Transitional Measures Monthly Amount for that month.

Transitional Rules

32. If, prior to execution of the Agreement, the Province determines in consultation with Canada the framework and all parameters relating to transitional rules, a transitional tax adjustment and a Social Services Tax transitional housing rebate, in respect of new housing or new rental housing, as contemplated in Part IX of the Excise Tax Act, the Parties agree that Canada will administer:

- (a) such transitional rules, including the applicable builder reporting and disclosure requirements;
- (b) the transitional tax adjustment related to such new housing or new rental housing; and
- (c) the Social Services Tax transitional housing rebate.

33. The transitional rules related to implementation of the PVAT in respect of the Province and the winding-down of the Provincial Sales Tax in respect of the Province will be mutually agreed upon between the Parties and, in arriving at this mutual agreement, the Parties acknowledge that the administrative and structural parameters related to these transitional rules must match the framework and rules set out in the Excise Tax Act.

Administration of Provincial Sales Tax

34. During the period that the Provincial Sales Tax of the Province is being wound-down, the Province and Canada may agree on the provision by Canada to the Province of services in respect of the Provincial Sales Tax winding-down, on an incremental fee-for-service basis, including services related to collections, audits, rulings, objections and appeals, which agreement, if any, may from time to time be mutually amended by the Province and Canada.

Human Resources

35. The Parties acknowledge that the Canada Revenue Agency, the Treasury Board and the Province must consider all relevant legislation and policies and that the Canada Revenue Agency, the Treasury Board and the Province have collective agreement obligations with their respective bargaining agents. In this context, each of the Canada Revenue Agency and the appropriate delegates of the Public Service Commission agree to negotiate the best possible arrangements, to be contained in the human resource agreements referred to in Part XI, for employment within the Province at the Canada Revenue Agency, the Canada Border Services Agency or other departments or agencies of Canada of public service employees of the Province affected by this Agreement.

36. The Parties agree that the Canada Revenue Agency and Canada Border Services Agency will take steps to maximize the number of activities and operations related to the PVAT in respect of the Province that are carried on in the Province. Where it can be demonstrated, with respect to specific activities and operations related to the PVAT in respect of the Province, that the effective administration of the PVAT in respect of the Province would be jeopardized if the activities and operations are performed in the Province, each of the Canada Revenue Agency and the Treasury Board agree to use best efforts to maximize employment opportunities in the Province for a corresponding number of employees of the Province affected by this initiative within the Canada Revenue Agency and other departments or agencies of Canada.

Ottawa, Canada K1A 0G5

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Результаты

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And it is not only the *Journal* that has been the subject of criticism. The *Journal* has been criticised for its failure to report on the activities of the *Journal* itself. The *Journal* has been criticised for its failure to report on the activities of the *Journal* itself. The *Journal* has been criticised for its failure to report on the activities of the *Journal* itself.

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MCH Read

The Honourable Colin Hansen, M.L.A.
Minister of Finance and Deputy Premier
Government of British Columbia
PO Box 9048 Stn Prov Govt
Victoria, BC V8W 9E2

Dear Minister Hansen:

I am writing in response to your letter dated February 26, 2010 regarding the *Comprehensive Integrated Tax Coordination Agreement* between the Government of Canada and the Government of British Columbia (referred to in this letter as the "CITCA").

In accordance with clause 7 of Annex "C" to the CTTCA and the other provisions of that Annex under the heading "Transitional Assistance", I agree on behalf of the Government of Canada with your proposal that the portions of the Assistance Amount become payable as and when set forth immediately below, unless, in accordance with that clause, the Parties otherwise agree from time to time on the sum and timing for any such portion.

If the Province is not considered to have, at or before the time set forth in the table below, committed a material breach of the Agreement, Canada will, at that time, pay to the Province the amount set opposite that time in the table to be applied toward satisfaction of the Assistance Amount:

Time	Amount
within 7 days of the tabling by the Province of legislation to wind-down the Provincial Sales Tax of the Province	\$250 million
on the first business day following the Implementation Date	\$769 million
on the first business day following the day that is one year after the Implementation Date	\$580 million

I also acknowledge that, further to clause 7 of Annex "C" to the CITCA, this agreement with respect to as and when the portions of the Assistance Amount become payable means that clause 8 of Annex "C" to the CITCA will not come into effect.

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Canada

Additionally, I understand that British Columbia wishes to amend clause 8 of Annex "B" to the CITCA in accordance with the terms and conditions set out in the CITCA. On behalf of the Government of Canada, I accept your proposal that clause 8 of Annex "B" to the CITCA be replaced by the following:

8. On and from the Implementation Date, subject to the definitions under Part IX of the Excise Tax Act and unless otherwise amended in accordance with the Agreement, the Parties agree that the applicable rates of the rebates of the PVAT in respect of the Province in respect of certain public service bodies will be:

- (a) in the case of municipalities, 75%;
- (b) in the case of universities and public colleges, 75%;
- (c) in the case of school authorities, 87%;
- (d) in the case of hospital authorities, facility operators and external suppliers, 58%; and
- (e) in the case of charities and qualifying non-profit organizations, 57%.

My acceptance of the above-noted proposals is subject to obtaining any approvals or authorizations that may be necessary, e.g. the approval of the Governor in Council.

In accordance with the CITCA, I acknowledge that this agreement with respect to the above-noted proposals is to be effective on and from the date of this letter. If, however, execution of any of the above-noted proposals is subject to obtaining approvals or authorizations, the effective date of the proposal will be either the date of the approval or authorization or an earlier date specified therein.

Finally, I agree that, except as provided in this letter, the CITCA continue to bind the Parties in accordance with its terms and that, unless otherwise defined in this letter, terms used in this letter have the same meanings as in the CITCA.

Sincerely,

[original signed by]

James M. Flaherty

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EXHIBIT D

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British Columbia, Ontario Residents to Become Eligible for Non-resident Sales Tax Exemption

OLYMPIA – June 8, 2010 – Beginning July 1, residents of British Columbia and Ontario become eligible for a non-resident sales tax exemption on purchases of goods in Washington for use outside the state.

State law allows a sales tax exemption to residents of jurisdictions that impose a sales tax of three percent or less. Washington sellers are not required to make tax-exempt sales to qualifying nonresidents, but most do. The exemption applies only to tangible personal property and does not apply to lodging, meals, or other retail services that are provided in the state.

In order to receive the exemption, qualifying residents must show proof of residency, such as a driver's license, to the Washington seller. The seller must retain the information to support the exemption in the event of a tax audit.

Residents of British Columbia and Ontario previously did not qualify for the exemption but both provinces are adopting a harmonized sales tax (HST) in tandem with the Canadian federal government beginning July 1. The HST technically is a value-added tax (VAT) and not a sales tax.

Residents of other Canadian provinces that impose the harmonized VAT have been eligible for the exemption for years.

Six states, including Alaska, Colorado, Oregon, Montana, Delaware and New Hampshire, eight Canadian provinces, and four U.S. possessions already qualify for this exemption.

The exemption statute, RCW 82.08.0273, was enacted in 1965.

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More information

Contact:
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(360) 570-6048

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2008 releases

2007 releases

2006 releases

2005 releases

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2003 releases

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Access Washington

Voter registration
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Instructions for retailers on sales tax exemption for British Columbia residents now available on Revenue's website

OLYMPIA – Jan. 10, 2010 – The Department of Revenue has posted instructions on its website for retailers who may be selling goods tax-free to British Columbia residents beginning July 1.

British Columbia residents will become eligible for the tax break because the province is shifting from a Provincial Sales Tax to a Harmonized Sales Tax (HST) July 1. Despite the name, the combined federal-provincial HST is a value-added tax and not a sales tax.

A 1965 Washington law allows Washington merchants to sell products exempt from sales tax to residents of states and provinces that have either no sales tax or a sales tax of less than three percent. Currently, residents of six states, four U.S. possessions, and eight provinces qualify, and both British Columbia and Ontario will be added July 1.

The exemption applies only to the sale of tangible personal property that will be used outside Washington and does not apply to lodging, meals, or other retail services that are provided in the state.

A seller making exempt sales to eligible nonresidents must keep a record of it to prove the buyer qualified for the tax exemption in the event the seller is audited. Generally the seller can record the information from the purchaser's driver's license (ID number, expiration date, purchaser's name, and state of residency). Complete information on the record-keeping requirements is posted at <http://dor.wa.gov/nonresidents/>.

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More information

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